

## 48<sup>TH</sup> & O STREETS REDEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2005, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "City"), VILLAGE DEVELOPMENT - O STREET, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Village Development"), WEST GATE BANK (hereinafter referred to as "West Gate"), and THE EATING ESTABLISHMENT 48<sup>TH</sup> & O, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Eating Establishment") (Village Development, West Gate, and Eating Establishment are sometimes hereinafter collectively referred to as "Redeveloper").

### RECITALS

WHEREAS, the City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the North 48<sup>th</sup> Street Redevelopment Plan (the "Redevelopment Plan") providing for redevelopment in the City of Lincoln in the vicinity of North 48<sup>th</sup> and O Streets a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the "City Clerk"); and

WHEREAS, on April 15, 2005, Redeveloper submitted a joint Proposal for Redevelopment to the City ("Proposal for Redevelopment"), in response to the City's Request for Proposals, Specification No. 05-049, with respect to the redevelopment of the real property generally located at the southeast corner of 48<sup>th</sup> and O Streets, Lincoln, Lancaster County, Nebraska, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Project Site"); and

WHEREAS, the City and Redeveloper desire to enter into this agreement to implement the redevelopment of the Project Site for the purposes in accordance with the Redevelopment Plan; and

WHEREAS, the City and Redeveloper mutually agree that the redevelopment of the Project Site is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

### ARTICLE I. REDEVELOPER'S RESPONSIBILITIES

**Section 101. Redeveloper's Responsibilities.** The Redeveloper, at its own cost and expense, shall purchase the Project Site in fee simple, subject to easements and restrictions of record



including the covenants agreed to be placed according to this Agreement, and to develop the Project Site generally as follows:

A. Village Development Parcel. That portion of the Project Site identified on the Site Plan (as hereinafter defined) as the "Village Development Parcel" shall be developed and rehabilitated for use as retail space consisting of a Walgreens store containing approximately 14,820 square feet and related improvements including, but not limited to, a double-lane drive through pharmacy, which improvements are intended to provide for the employment of approximately thirty-five (35) employees, subject to economic conditions. The initial improvements on the Village Development Parcel shall be erected and completed by Village Development in accordance with the Approved Plans (as hereinafter defined). The Village Development Parcel shall include that portion of the Project Site identified on the Site Plan as an outlot (the "Outlot").

B. West Gate Parcel. That portion of the Project Site identified on the Site Plan as the "West Gate Parcel" shall be developed and rehabilitated for use as a bank and office facility consisting of a branch bank and office space for third-party tenant(s) containing approximately 6,000 square feet and related improvements including, but not limited to, a five lane drive-through facility, which improvements are intended to provide for the employment of approximately twelve (12) employees, subject to economic conditions. The initial improvements on the West Gate Parcel shall be erected and completed by West Gate in accordance with the Approved Plans.

C. Eating Establishment Parcel. That portion of the Project Site identified on the Site Plan as the "Eating Establishment Parcel" shall be developed and rehabilitated for use as a restaurant/fast food facility consisting of a combination Runza Restaurant and Braeda® Fresh Express Café containing approximately 7,000 square feet and related improvements including, but not limited to, a drive-through facility, which improvements are intended to provide for the employment of approximately fifty (50) employees, subject to economic conditions. The initial improvements on the Eating Establishment Parcel shall be completed by Eating Establishment in accordance with the Approved Plans.

The above-described development and rehabilitation of the Project Site is hereinafter referred to as the "Project" or "Private Improvements."

**Section 102. Construction of Improvements.** The Redeveloper, at its cost, shall construct the Private Improvements on the Project Site as described above in conformity with the plans and specifications attached hereto as Exhibit "B" attached hereto and incorporated herein by this reference (the "Approved Plans").

**Section 103. Time for Completion of Improvements.** The development and construction of the Private Improvements (except for tenant finish within the buildings) shall be completed within one (1) year after the Closing Date (as hereinafter defined).

**Section 104. Progress Reports.** The Redeveloper shall make reports in such detail and at



such times as may be reasonably requested by the City as to the actual progress of the Redeveloper with respect to construction of the Private Improvements, but such reports shall not be required more frequently than every ninety (90) days.

**Section 105. Redeveloper's Certificate of Completion.**

A. Promptly after completion by Redeveloper of the Private Improvements on the Project Site, as specified above, in accordance with all provisions of the this Agreement, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private Improvements required to be constructed by the Redeveloper. If the improvements have been completed in conformance with this Agreement, the City shall issue to Redeveloper a Certificate of Completion, the form of which is attached hereto as Exhibit "C" and incorporated herein by this reference. The issuance of the Redeveloper's Certificate of Completion by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Agreement with respect to the obligations of the Redeveloper and its successors and assigns to construct the Private Improvement. As used herein, the term "completion" shall mean substantial completion of the required Private Improvements.

B. The Redeveloper's Certificate of Completion shall be recorded by the Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska. If the City shall refuse or fail to issue a Redeveloper's Certificate of Completion after a final inspection has been requested and performed, the City shall, within thirty (30) days provide the Redeveloper with a written statement indicating in what particulars the Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for the Redeveloper to take or perform in order to obtain such certification.

**Section 106. Evidence of Financial Ability of Redeveloper.** The Redeveloper shall provide to the City evidence of availability of finances necessary for purposes of carrying out the commitment of the Redeveloper in connection with the Proposal for Redevelopment. Such information shall state the amount and source of debt financing which is available, or committed, to the Redeveloper for use in the Proposal for Redevelopment. Submittal of such financial information to the Director of the Urban Development of the City shall be a condition precedent to the City's obligations under Article V of this Agreement.

**ARTICLE II  
CLOSING**

**Section 201. Closing.** The conveyance of the Project Site from the City to the Redeveloper ("Closing") shall be no later than the date of substantial completion of the Phase 1 Road Construction components on O street from 44<sup>th</sup> to 52nd street and on 48<sup>th</sup> street (the east lanes) from R to M street. (the "Closing Date").

**Section 202. Title and Possession of Project Site.** At Closing, (i) title to and possession of the Village Development Parcel shall be conveyed by the City to Village Development, (ii) title to



and possession of the West Gate Parcel shall be conveyed by the City to West Gate, and (iii) title to and possession of the Eating Establishment Parcel shall be conveyed by the City to Eating Establishment, under the terms and conditions set forth herein.

**Section 203. Final Plat.** Prior to Closing, the City shall acquire title to the Project Site and the Redeveloper shall cause the Project Site to be replatted as shown on the Site Plan attached hereto as Exhibit "D" and incorporated herein by this reference (the "Site Plan") in order to permit the City to convey the Village Development Parcel to Village Development, the West Gate Parcel to West Gate, and the Eating Establishment Parcel to Eating Establishment at Closing (the "Final Plat"). The costs associated with the Final Plat including, but not limited to, the cost of the professional engineering services necessary in order to accomplish the Final Plat shall be paid as provided in the Uses and Sources of Funds attached hereto as Exhibit "E", one-half (½) by the City and one-half (½) by the Redeveloper.

**Section 204. Title Insurance.** The Redeveloper shall obtain a Commitment for an Owner's Policy of Title Insurance (the "Commitment") to be issued by a title insurance company licensed to do business in the State of Nebraska selected by the Redeveloper (the "Title Company"), pursuant to which the Title Company agrees to issue to the Redeveloper an American Land Title Association (ALTA) Owner's Policy of Title Insurance, insuring Village Development's interest in the Village Development Parcel, West Gate's interest in the West Gate Parcel, and Eating Establishment's interest in the Eating Establishment Parcel. The premium for the title insurance policy issued pursuant to the Commitment (the "Title Policy") shall be paid one-half (½) by the City and one-half (½) by the Redeveloper.

**Section 205. Closing Documents.**

A. Deliveries at Closing by the City. At Closing the City shall deliver to the Redeveloper, and the Redeveloper shall accept from the City, the following:

1. A duly executed and acknowledged warranty deed in form and substance reasonably acceptable to Village Development, conveying and assigning to Village Development good, marketable and indefeasible fee simple title to the Village Development Parcel, free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, except easements and restrictions reflected on the Final Plat and approved by Village Development.

2. A duly executed and acknowledged warranty deed in form and substance reasonably acceptable to West Gate, conveying and assigning to West Gate good, marketable and indefeasible fee simple title to the West Gate Parcel, free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, except easements and restrictions reflected on the Final Plat and approved by West Gate.



3. A duly executed and acknowledged warranty deed in form and substance reasonably acceptable to Eating Establishment, conveying and assigning to Eating Establishment good, marketable and indefeasible fee simple title to the Eating Establishment Parcel, free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, except easements and restrictions reflected on the Final Plat and approved by Eating Establishment.

4. Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Commitment.

B. Documents to be Delivered by Redeveloper. At Closing the Redeveloper shall deliver to the City, and the City shall accept from the Redeveloper, good funds (as defined by law) payable to the City in the amount of Four Million and No/100ths Dollars (\$4,000,000.00).

**Section 206. Property Taxes and Assessments.** All real and personal property taxes and assessments, if any, for the year in which Closing occurs shall be prorated as of the Closing Date, and all prior years' taxes, interest and other charges, if any, shall either be exempt or paid in full by the City at or prior to Closing.

### **ARTICLE III. REPRESENTATIONS**

**Section 301. Development of Project Site.** The Redeveloper represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of such property and not for speculation in land holding.

**Section 302. Restrictions on Assignments of Rights or Obligations.** The Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion by the City, there shall be no sale or transfer of the Redeveloper or assignment of rights or obligations under this Agreement to any party without the prior written approval of the City, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper;

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all of the conditions and restrictions to which the Redeveloper is subject. No transfer of, or change with respect to ownership in the Redeveloper's interest in the Project Site or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with



respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Project Site and the construction of the Private Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to the Redeveloper in writing; and

D. The Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of Proposal for Redevelopment; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion. The restrictions set forth in this Section 302 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion by the City.

**Section 303. Access.** The City represents and agrees that, upon issuance of the Redeveloper's Certificate of Completion, the Project Site shall have access onto 48<sup>th</sup>, 50<sup>th</sup>, "M" and "O" Streets, each at the locations as shown on the Site Plan.

**Section 304. Changes in Construction Documents.** The Mayor shall be entitled to review and approve the final construction documents for the Private Improvements. [see section 805] Redeveloper shall submit any material changes in the construction documents affecting the exterior of the Private Improvements to the City for approval which approval shall not be unreasonably withheld. The City shall be deemed to have approved the submitted changes unless Redeveloper receives written notice within fourteen (14) days after receipt of the proposed change. Redeveloper may submit requested changes to the Approved Plans that apply to the City Improvements (as hereinafter defined) to the City for approval. If the amendments thereto are in conformance with the Project and this Agreement, and the City in its sole discretion approves the same, then Redeveloper shall be obligated to pay the additional costs and fees of the City's Architect, if any, incurred as a result of such changes which shall be deemed a part of improvements required to be completed by Redeveloper under this Agreement.

**Section 305. Change in Scope, Termination of Project.** City and Redeveloper agree that any material change in the scope of the Project including termination of the entire Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Uses and Sources of Funds and Time Line (as hereinafter defined) for the Project in this Agreement and, if applicable, the costs incurred by the respective parties to date. It is understood and agreed that any delay related to critical path items in the Time Line is presumed to be a material



change in the scope of the Project regardless of fault. Notwithstanding the foregoing, in the event that Redeveloper is unable through no fault of the Redeveloper to obtain the necessary governmental approvals and permits from the City prior to Closing necessary to construct the Private Improvements as reflected on the Approved Plans, Redeveloper may terminate this Agreement by delivering written notice to the City of default pursuant to Section 701 including the opportunity to cure the same.

**Section 306. Use and Restrictions of the Property** Redeveloper's intended use of the Project Site as reflected on the Approved Plans does comply with the Redevelopment Plan and any applicable zoning and local ordinances. The Redeveloper hereby represents and agrees that neither all or any portion of the Project Site shall be used, directly or indirectly, for the operation of 1) any outdoor off-premise advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof; 2) a gas station or convenience store with or without gasoline pumps; 3) any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations; 4) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations; 5) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service; 6) any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility; 7) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law; 8) any business whose predominant operation is warehousing or storage of goods, materials or merchandise; 9) any business involving a residential use, sale or display of weapons, self service laundry, industrial manufacturing, off-site outdoor advertising on the premises, cell tower, radio telecommunication or other communication tower, illegal activities, or sale of any illegal goods or products. The foregoing restriction shall not prohibit the installation and operation of satellite dishes and related equipment used in connection with the permitted use of the Project Site.

It is intended that each of the restrictions set forth herein shall run with the land and shall bind every person having any fee or other interest in the Project Site and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The use restrictions set forth in this Section shall survive Closing. At Closing, the Redeveloper shall record permanent covenants against



the Project Site with respect to the use restrictions set forth in this Section in the form attached hereto as Exhibit "F" attached hereto and incorporated herein by this reference.

**Section 307. Access Easement.** At Closing, Redeveloper shall execute and record, in the form attached hereto as Exhibit "F" and incorporated herein by this reference, a permanent, exclusive easement for the use and benefit of the owners of the Project Site, and their tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, over and across those portions of the Project Site as are designated as common drive areas or common access driveways as shown on the Site Plan, to provide vehicular passage over an across such portion of Project Site to and from 48<sup>th</sup>, 50<sup>th</sup>, "O" and "M" Streets.

**Section 308. Permits and Approvals.** Prior to Closing, Redeveloper agrees to secure all permits and licenses necessary for its intended use of the Project Site including, but not limited to, necessary building permits and inspections.

**Section 309. Inspection and Testing.** The City shall, at the City's sole cost and expense (i) obtain and deliver to Redeveloper an Phase I Environmental Site Assessment using ASTM E1527-00 with respect to the Project Site as well as applicable Phase II sampling of the Project Site soils and water for hazardous materials and/or substances as determined appropriate by the consulting ESA engineer selected and hired by the City. In the event any areas of concern at the Project Site reasonably require remediation including sampling or professional fees in excess of the estimated costs related to the same as set forth on the Uses and Sources of Funds, then the City and Redeveloper agree that such event will be deemed to be a material change in the scope of the Project requiring a written amendment or termination under Section 305 of this Agreement.

**Section 310. Impact Fees.** The City acknowledges that based on the credits and projected impact fees reflected on Exhibit "G" attached hereto and incorporated herein by this reference, the total amount due from Redeveloper under the Impact Fee Ordinance (Ordinance No. 18113) based on the projected new use reflected on Exhibit "G" will be zero (\$0).

#### **ARTICLE IV. MORTGAGE FINANCING; RIGHTS OR MORTGAGEES**

**Section 401. Limitation Upon Encumbrance of Property.** Prior to issuance of the Redeveloper's Certificate of Completion by the City, neither the Redeveloper nor any successors in interest to the Redeveloper shall engage in any financing, except for construction financing in connection with construction of the Private Improvements which lender(s) shall have prior liens upon the Project Site, or any other transaction creating any mortgage or any other encumbrance or lien upon the Project Site, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Project Site, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Private Improvements on the Project Site, and to finance, operate, maintain and repair the Private Improvements. All such additional mortgages and other encumbrances or liens shall provide that they are subject to the terms and conditions of this Agreement, and shall be recorded in the appropriate public records in a timely manner following their execution.



The Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the Project Site, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Site whether by voluntary act of any of the Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the Project Site and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond, security or title insurance coverage insuring over such encumbrance or lien is posted with the City to permit the City to avoid foreclosure of such encumbrance or lien.

**Section 402. Mortgagee Obligated to Construct.** Prior to the issuance of a Redeveloper's Certificate of Completion and if the holder of any mortgage authorized by this Agreement obtains title to any of the Project Site as a result of foreclosure proceedings or action in lieu thereof, or if any other party obtains title to the Project Site from the holder of any mortgage authorized by this Agreement, and any other party who thereafter obtains title to any of the Project Site from the holder of any mortgage authorized by this Agreement, and any other party who thereafter obtains title to any of the Project Site from or through such holder or purchaser, they shall be obligated by the provisions of this Agreement to construct or to complete the Private Improvements or to guarantee such construction and completion. Any such party shall be obligated to commence construction within two (2) months from the date of acquisition of title by said party and to complete construction in accordance with this Agreement within twelve (12) months from the date of such acquisition.

**Section 403. Copy of Notice of Default to Mortgagee.** Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder as shown in the records of the City or as provided by such mortgagee.

**Section 404. Mortgagee's Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 403, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand as referred to in Section 403, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default.

**Section 405. City's Option to Purchase Property.** In any case where the holder of any mortgage obtains title to the Project Site as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper's Certificate of Completion, the City shall (and any additional mortgage instrument made after the date of this Agreement with respect to the



Project Site prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) be entitled, at its option, to a conveyance to it of the Project Site upon payment to such holder of an amount equal to the sum of:

(1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(2) All expense with regard to foreclosure;

(3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of the Project Site;

(4) The depreciated cost of any improvement made by such holder;

(5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and

(6) All other reasonable holding costs actually incurred as to the Project Site.

The City's option shall remain in force for ninety (90) days after the date the holder of any mortgage obtains title to the Project Site and notifies the City, unless the City waives the option prior to the end of such 90-day period.

**Section 406. Mortgage Rights Applicable to Other Forms of Encumbrance.** The rights and obligations of this Agreement relating to mortgages of the Project Site prior to issuance of the Redeveloper's Certificate of Completion shall apply to any other type of encumbrance on the Project Site, and any of the state rights, obligations, and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance, all of which shall be duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

**Section 407. Termination of Provisions.** The provisions of Article IV shall terminate upon issuance by the City to the Redeveloper the Redeveloper's Certificate of Completion.

## **ARTICLE V. TAX AGREEMENT**

**Section 501. Valuation of Property Within the Project Site.** It is understood that the City intends to use the ad valorem tax provisions as set forth in Neb. Rev. Stat. § 18-2147 et seq. in



accordance with the Redevelopment Plan. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and in Neb. Rev. Stat. §§ 18-2147 to 18-2150 (Reissue 1987), which will be attributable in part to the rehabilitation and redevelopment contemplated under this Agreement.

**Section 502. Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to the Redeveloper of the Redeveloper's Certificate of Completion, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "Tax Increment Period"), convey the Project Site to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subsidiaries.

**Section 503. Agreement to Pay Taxes.** Redeveloper agrees to pay all real property taxes levied upon the Project Site prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Project Site and improvements for tax purposes.

**Section 504. Assessment Valuation.** The word "valuation" as used in this Article V shall mean the fair market value as that term appears on Lancaster County real estate tax statements. For purposes of this Article V references to the Project Site shall include all improvements thereto that are customarily included in valuation for real property tax purposes in Lancaster County, Nebraska. Nothing herein shall be deemed an agreement by Redeveloper not to protest valuation for tax purposes as of any assessment date on which the construction of the City Improvements and the Private Improvements relating to the Project Site are not fully completed or not to protest the allocation of improvements between real property and personal property which is not appropriately made; or not to protest valuation for tax purposes as of any assessment date following the construction of the City Improvements and the Private Improvements if such valuation exceeds \$3,482,856.00 with respect to the Village Development Parcel, \$2,128,412.00 with respect to the West Gate Parcel, and \$2,128,412.00 with respect to the Eating Establishment Parcel.

**Section 505. Damage or Destruction of Redeveloper's Property.** During the Tax Increment Period, Redeveloper agrees to keep the construction area and completed premises insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the insurable value thereof based upon an estimate of insurable value but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section 504 may, at Redeveloper's option, be carried under an insurance policy(ies), self-insurance (as long as Redeveloper maintains a net worth in excess of \$100,000,000.00) or pursuant to a master policy of insurance or so-called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to restore its facility to its prior condition within twelve (12) months from the date of the damage or destruction, and shall



diligently pursue the same to completion.

**Section 506. Condemnation.** In the event that during the Tax Increment Period all or a substantial portion of the Project Site is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

**Section 507. Termination of Provisions.** The provisions of Article V shall terminate upon the end of the Tax Increment Period.

**Section 508. Successors and Assigns.** The provisions of Article V shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

## **ARTICLE VI. CITY IMPROVEMENTS**

### **Section 601. City Improvements.**

A. Prior to Closing, the City, at its own cost and expense, shall (i) acquire title to the Project Site; (ii) demolish the existing improvements on the Project Site, and rough grade the Project Site in accordance with the specifications attached hereto as Exhibit "H-1" and incorporated herein by this reference and the grading plans attached hereto as Exhibit "H-2" and incorporated herein by this reference; (iii) construct, add, extend and/or relocate all existing utility services on the Project Site including, but not limited to, natural gas, sanitary sewer, electrical (including transformers for each lot as necessary), and water, as provided in the Approved Plans; (iv) complete construction of the access road to "M" Street located on the Outlot, sidewalks, street lights, street trees, and also the retaining wall on the south side of the Project Site, in accordance with the Approved Plans (collectively the "City Improvements"). The parties acknowledge that construction of the proposed improvements in connection with the "O" Street and 48<sup>th</sup> Street widening projects including, but not limited to the curb cuts and deceleration lanes on "O" Street and 48<sup>th</sup> Street as shown on the Site Plan (collectively, the "Street Improvements") are time critical to the project and all parties shall use their best efforts to coordinate, plan and implement the phasing, access and completion for the same within the project timeline as attached hereto as Exhibit "I" and incorporated herein by this reference (the "Time Line").

It is understood and agreed that the City shall not be responsible for any of the cost to construct the Private Improvements except as otherwise provided herein.

**Section 602. Contractor; Bond and Insurance.** The City shall select a general contractor or contractors to construct or install the City Improvements described in Section 601 above in accordance with its competitive bidding procedures. Any such general contractor shall be required to



provide a performance and payment bond in the amount of the contract, or otherwise enter into a guarantee of payment and performance as may be acceptable to the City. Any such contractor for the City Improvements shall be required to obtain and keep in force at all times until completion of construction policies of insurance, including coverage for contractor's general liability, including Standard Blasting or Explosion coverage, Standard Collapse coverage, Standard Underground coverage, completed operations, and automobile liability in the minimum amounts required by the city's standard specifications

## **ARTICLE VII. REMEDIES**

**Section 701. In General.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions by the City, the Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such 30-day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

**Section 702. Other Rights and Remedies; No Waiver by Delay.** The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

**Section 703. Delay in Performance For Causes Beyond Control of Party.** For the purpose of any provisions of this Agreement, the City and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.



**Section 704. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

## **ARTICLE VIII. MISCELLANEOUS**

**Section 801. Conflicts of Interest; City Representatives Not Individually Liable.** No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Agreement.

**Section 802. Persons Authorized to Issue Approvals.** For purposes of this Agreement and the approvals and disapprovals required hereunder, the Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or its successor as constituting the approval or disapproval required by any one or more of the City, the Mayor, or the Director of the Department of Urban Development or its successor hereunder. Until City receives further written notice from Village Development, City shall be entitled to rely on the written approval of Tamas R. Allan, Manager of Village Development, as constituting the approval or disapproval of Village Development; Carl J. Sjulín, President of West Gate, as constituting the approval or disapproval of West Gate; and Donald R. Everett, Jr., Manager of Eating Establishment, as constituting the approval or disapproval of Eating Establishment.

**Section 803. Equal Employment Opportunity.** Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Proposal for Redevelopment because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for the Proposal for Redevelopment are employed, and that employees are treated during employment without regard to their race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Section 804. Notices and Demands.** A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, in the case of Village Development, to Tamas R. Allan, Manager, 1045 Lincoln Mall, Suite 300, Lincoln, Nebraska 68508; in the case of West Gate, to Carl J. Sjulín, President, 6003 Old Cheney Road,



Lincoln, Nebraska 68516; in the case of Eating Establishment, to Donald R. Everett, Jr., Manager, 5931 South 58<sup>th</sup> Street, Lincoln, Nebraska 68516; and, in the case of the City, to the Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

**Section 805. Approval Not Unreasonably Withheld and Timely Approval.** Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Agreement submits any item to another party to this Agreement for approval pursuant to this Agreement, and the approving party fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

**Section 806. Access to Project Site.** The Redeveloper shall permit the representatives of the City to enter all of the Project Site and at any and all reasonable times, as the City may deem necessary for the purposes of this Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements. Similarly, City shall permit Redeveloper such entry upon the City's Property and public rights-of-way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for in this section. The City's right of access granted under this section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

**Section 807. Termination of Provisions; Binding.** The provisions and covenants of this Agreement shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion contemplated herein, except as otherwise set forth herein. This Agreement shall run with the Project Site and shall inure to and bind the undersigned parties, successors and assigns.

**Section 808. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 809. Mutual Cooperation.** The parties agree to mutually cooperate in constructing the various improvements each is to construct in the Project Site so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time. Subject to Section 802, the parties agree to facilitate orderly communication and scheduling of day to day and technical logistics by using a named contact person for the City and Redeveloper, respectively as follows: Wynn Hjermstad for the City and Tim Gergen of Olsson Associates for the Redeveloper.



**Section 810. Integrated Contract; Severance of Provisions; Governing Law.** It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall be in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 811. Definitions.**

A. For the purpose of this Agreement, the term "holder" in reference to a mortgage shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.

B. The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

**Section 812. Obligations Not Joint and Several.** This Agreement shall not be deemed to create a joint venture or agency relationship between the parties hereto. Village Development, West Gate, and Eating Establishment shall not be jointly and severally liable for the obligations of Redeveloper hereunder and the City agrees to look solely to Village Development for satisfaction of Redeveloper's obligations hereunder with respect to the Village Development Parcel, to West Gate for satisfaction of Redeveloper's obligations hereunder with respect to the West Gate Parcel, and to Eating Establishment for satisfaction of Redeveloper's obligations hereunder with respect to the Eating Establishment Parcel. The parties hereto acknowledge that after Closing, the parties obligations under this Agreement shall be separate and distinct. The City hereby agrees that the Redeveloper's Certificate of Completion shall be issued to each Redeveloper upon completion of that portion of the Private Improvements which such Redeveloper is obligated to construct on that portion of the Project Site owned by such Redeveloper.

Executed by City this \_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a Municipal Corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Coleen J. Seng, Mayor



Executed by Village Development this 10<sup>th</sup> day of November, 2005.

VILLAGE DEVELOPMENT - O STREET, L.L.C.,  
a Nebraska limited liability company,

By: Tamas R. Allan  
Tamas R. Allan, Manager

Executed by West Gate this 10<sup>th</sup> day of November, 2005.

WEST GATE BANK

By: Carl J. Sjulian  
Carl J. Sjulian, President

Executed by Eating Establishment this 10<sup>th</sup> day of November, 2005.

THE EATING ESTABLISHMENT 48<sup>TH</sup> & O, L.L.C.,  
a Nebraska limited liability company

By: Donald R. Everett, Jr.  
Donald R. Everett, Jr., Manager



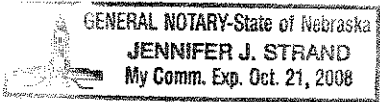
STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Coleen J. Seng, Mayor of the City of Lincoln.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER                )

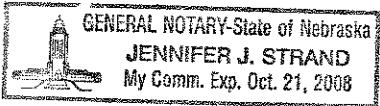
The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of Nov, 2005, by Tamas R. Allan, Manager of Village Development – O Street, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.



Jennifer Strand  
Notary Public

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER                )

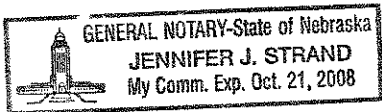
The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of Nov, 2005, by Carl J. Sjulín, President of West Gate Bank.



Jennifer Strand  
Notary Public

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER                )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of Nov, 2005, by Donald R. Everett, Jr., Manager of The Eating Establishment 48<sup>th</sup> & O, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.



Jennifer Strand  
Notary Public



## LEGAL DESCRIPTION

That part of the remaining portion of Lot 4, Leming's Subdivision of the North Half of the Northeast Quarter of Section 29, Township 10 North, Range 7 East of the 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska, more particularly described as follows: Beginning at a point 30 feet West and 221 feet North of the Southeast corner of said Lot 4, Leming's Subdivision, said point being on the West Right-of-Way line of South 50<sup>th</sup> Street; thence North along said Right-of-Way line 391.77 feet to a point of curvature of a curve to the left, said curve having a central angle of 60° 06', and a radius of 23.00 feet; thence along the arc of said curve 24.13 feet to a point on the former South Right-of-Way line of "O" Street; thence West along said Right-of-Way line 546.55 feet to a point of curvature of a curve to the left, said curve having a central angle of 90° 20' and a radius of 23.00 feet; thence along the arc of said curve 36.26 feet to a point on the former East Right-of-Way line of South 48<sup>th</sup> Street; thence South along the said Right-of-Way line 163.00 feet; thence East and parallel to the South Right-of-Way line of "O" Street 125.0 feet; thence South and parallel to the West line of said Lot 4, 108.0 feet to the Northwest corner of Alles Replat; thence along the North line of Alles Replat and the North line of Alles Replat extended Easterly, to a point on the West Right-of-Way line of South 50<sup>th</sup> Street; thence South along said West Right-of-Way line to the Point of Beginning;

**Except** that part condemned for right-of-way by Instrument #2004-30482, described as follows: Commencing South along the West line from the Northwest corner of the Northeast Quarter of said Section 29, a distance of 215.33 feet; thence East along a line which deflects left 90° a distance of 43 feet to the Point of Beginning; thence North along a line parallel to and 43 feet East of the West line of said Northeast Quarter of said Section 29 a distance of 153.21 feet; thence Northeast along an arc with a central angle of 90° 20', a radius of 23 feet, and tangents of 23.05 feet, a distance of 36.26 feet; thence East along a line parallel to and 39 feet South of said Northeast Quarter of said Section 29, a distance of 546.08 feet; thence Southeast along an arc with a central angle of 60° 6', a radius of 23 feet, and tangents of 13.60 feet, a distance of 24.85 feet; thence South along the East line of said Lot 4 a distance of 18.82 feet; thence West along a line parallel to and 70 feet South of the North line of said Northeast Quarter of said Section 29 a distance of 542.61 feet; thence Southwest along a line which deflects left 45° 8' 47.05" a distance of 35.27 feet; thence South along a line parallel to and 65 feet East of the West line of said Northeast Quarter of said Section 29 a distance of 120.30 feet; thence West 22 feet to the Point of Beginning.

**AND ALSO:**

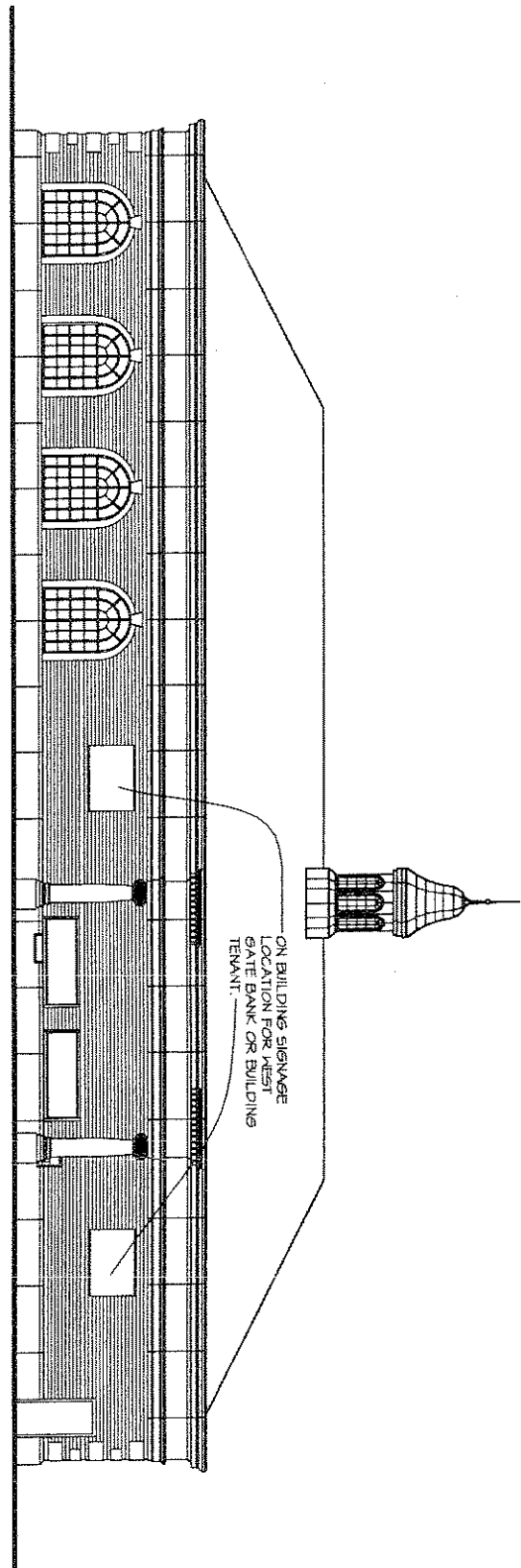
Part of Lot 4, Leming's Subdivision of the North Half of the Northeast Quarter of Section 29, Township 10 North, Range 7 East of the 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska, described as follows: Commencing on the West line of said Lot 4 at a point 207 feet South of the Northwest corner thereof; thence South on the West line of said Lot 4 a distance of 170 feet; thence East parallel with the North line of said Lot 4 a distance of 135 feet; thence North parallel with the West line of said Lot 4 a distance of 170 feet; thence West parallel with North line of said Lot 4 a distance of 135 feet to the Point of Beginning;

**Except** that part lying South of the North line of Alles Replat, extended Westerly;

**And also except** that part condemned for right-of-way by Instrument #82-30, described as follows: Beginning at a point on the West line of said Lot 4, located 207 feet South of the Northwest corner of said Lot 4; running thence East a distance of 10 feet; thence South parallel to the said West line a distance of 105.45 feet to a point of curvature; thence Southwesterly along the arc of a circular curve bearing to the right whose radius is 307 feet, an arc distance of 14.46 feet to a point of tangency; thence Southwesterly a distance of 50.16 feet; thence West a distance of 7.3 feet to a point on the West line of said Lot 4; thence North a distance of 170 feet to the Point of Beginning.

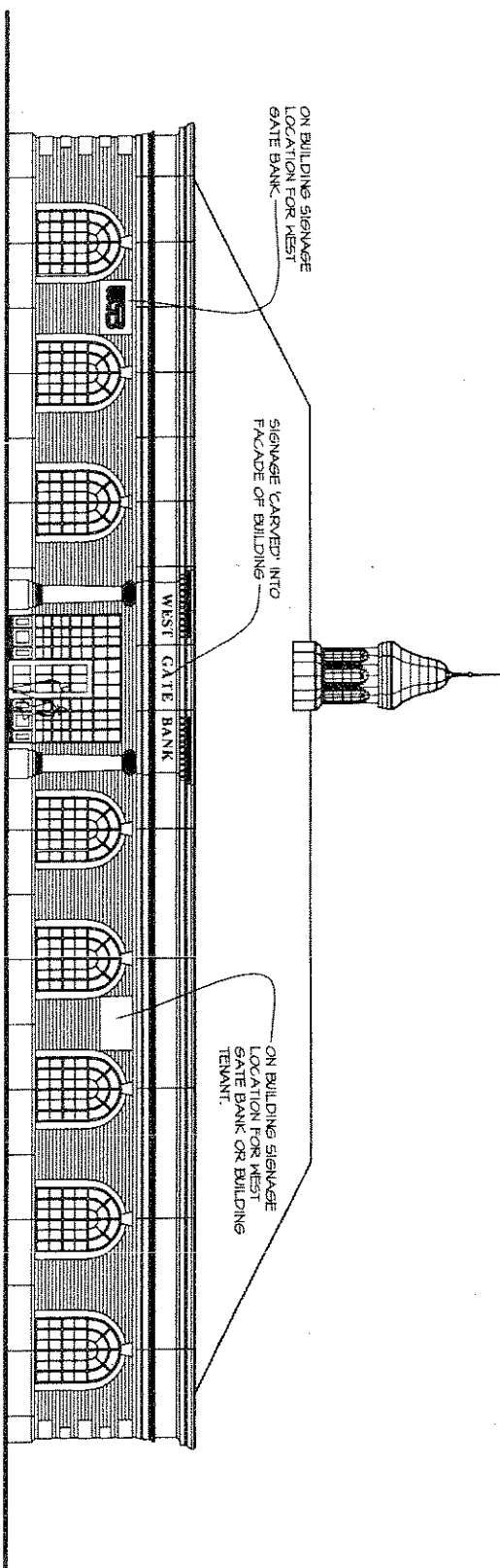


# Exhibit B



EAST ELEVATION

SCALE: 1/8" = 1'-0"



WEST ELEVATION

SCALE: 1/8" = 1'-0"

West Gate Bank 48th & 'O'

EXTERIOR ELEVATIONS w/ SIGNAGE

**DAVIS**  
DESIGN

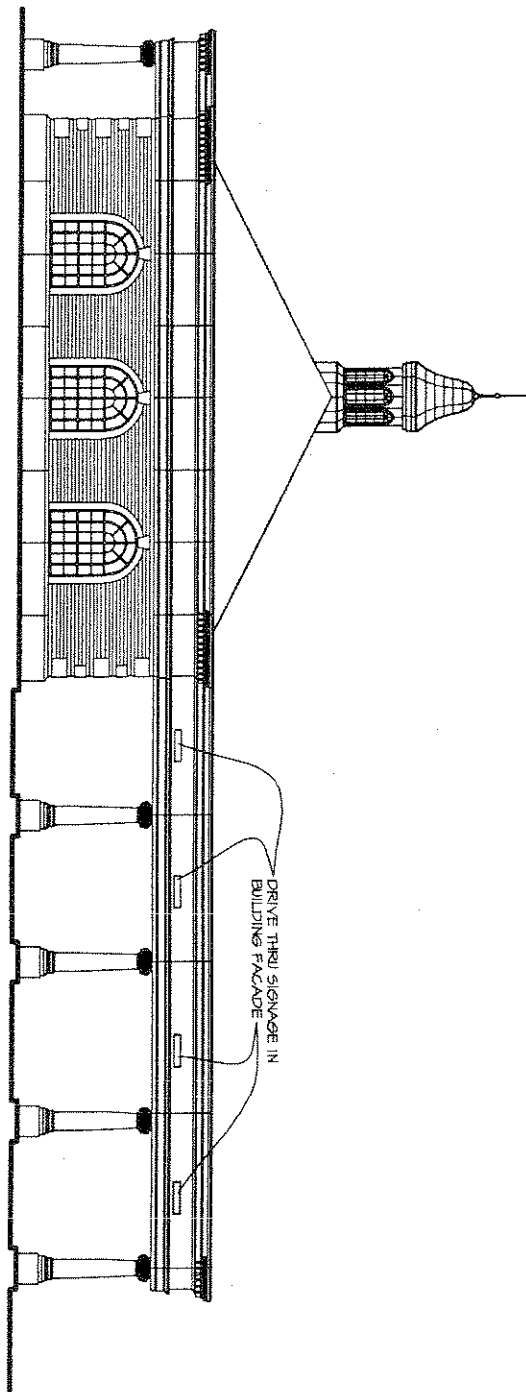
Office  
4242 S. 143rd St. S.  
Omaha, Nebraska 68107  
Phone (402) 341-0000  
Fax (402) 341-0001

Branch  
701 North 146th Street  
Lincoln, Nebraska 68508  
Phone (402) 426-9900  
Fax (402) 426-9900



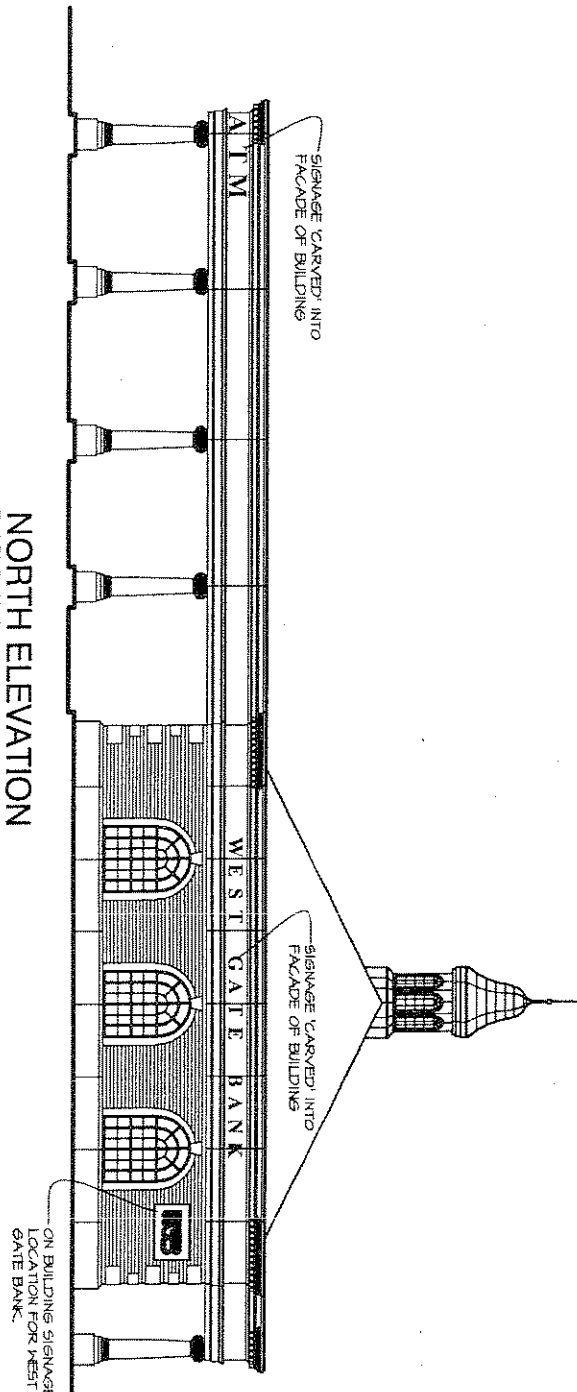
# **SOUTH ELEVATION**

SCALE: 1/8" = 1'-0"



# **NORTH ELEVATION**

SCALE: 1/8" = 1'-0"



West Gate Bank 48th & 'O'

EXTERIOR ELEVATIONS w/ SIGNAGE

**DAVIS**  
DESIGN

North Gate  
102 "Gate Drive" SW  
North Platte, NE 68901  
Phone (402) 346-0000  
FAX (402) 346-0000

South Gate  
20 "Gate Drive" SW  
North Platte, NE 68901  
Phone (402) 346-0000  
FAX (402) 346-0000





**DAVIS**  
DESIGN  
Architecture Engineering Interiors

**Acorn Plant**  
32 North County Street  
Pawcatuck, CT 06257  
Phone (860) 872-0918  
Fax (860) 872-0822

**Cheshire**  
250 North Main Street  
Cheshire, NH 03033  
Phone (603) 884-6000  
Fax (603) 884-6460

**Upham**  
250 North Main Street  
Upham, Vermont 05488  
Phone (802) 438-9900  
Fax (802) 438-9772



STANDING SEAM METAL ROOF  
COLOR; FOREST GREEN

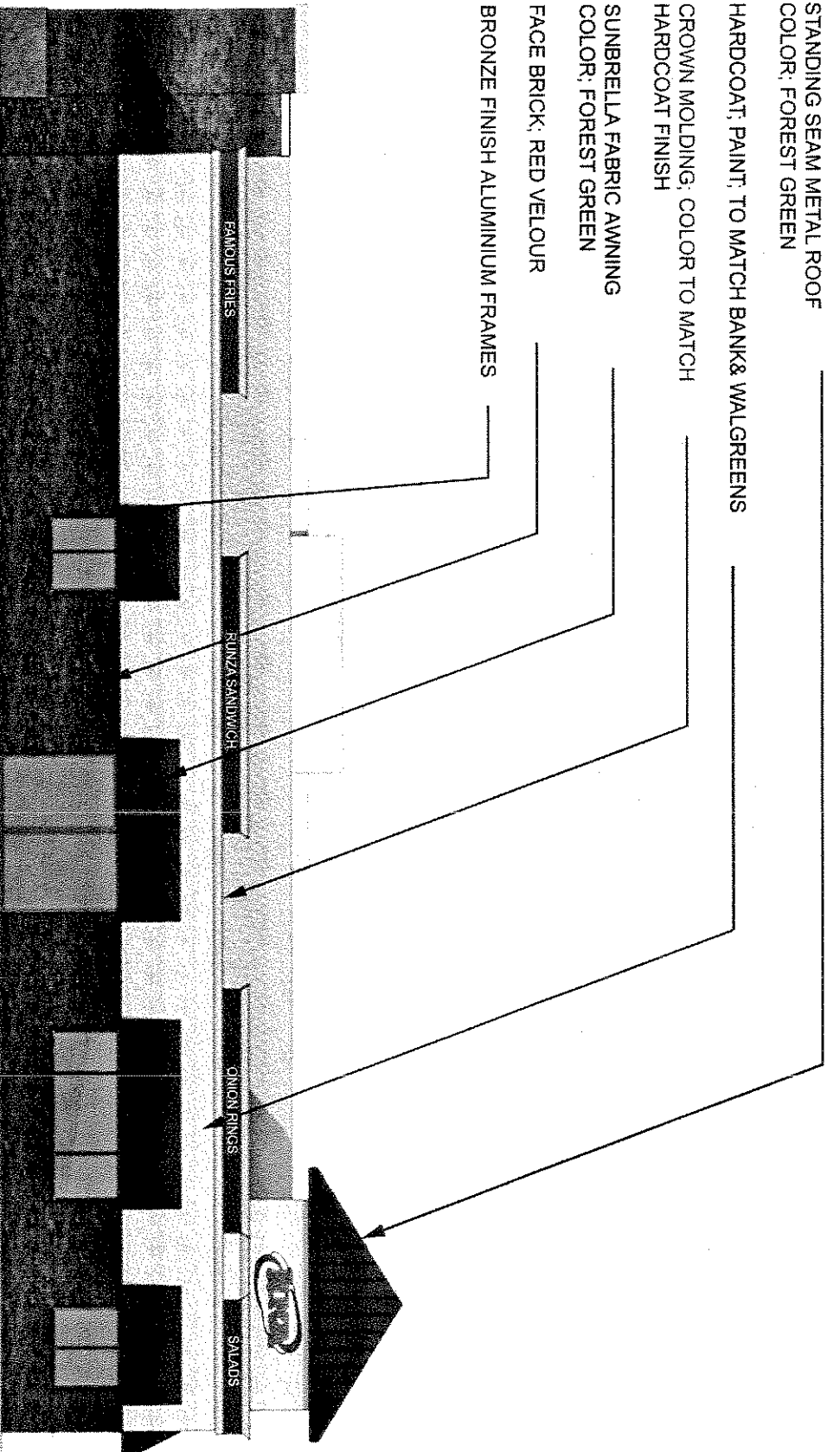
HARDCOAT; PAINT; TO MATCH BANK& WALGREENS

CROWN MOLDING; COLOR TO MATCH  
HARDCOAT FINISH

SUNBRELLA FABRIC AWNING  
COLOR; FOREST GREEN

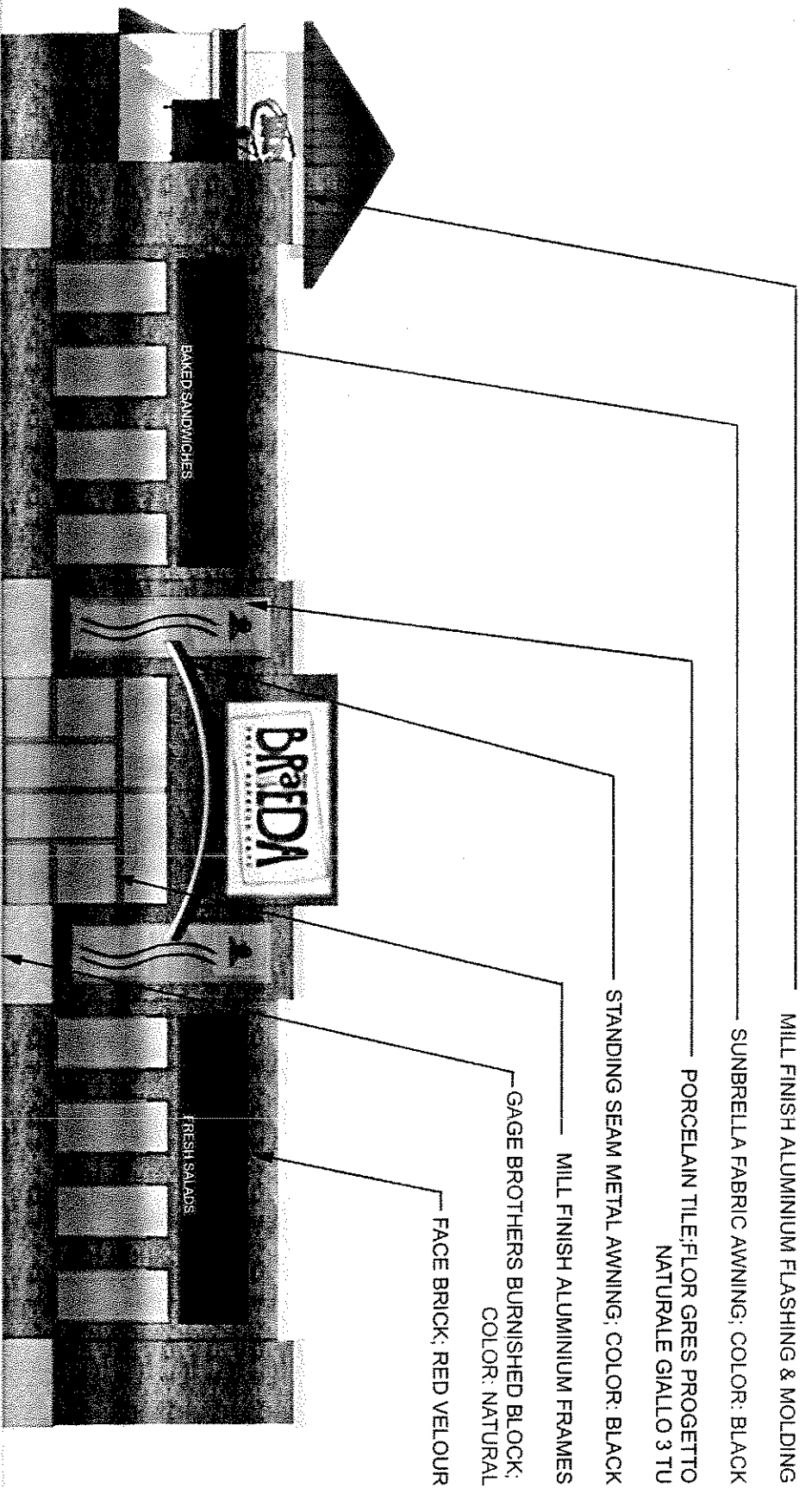
FACE BRICK; RED VELOUR

BRONZE FINISH ALUMINIUM FRAMES



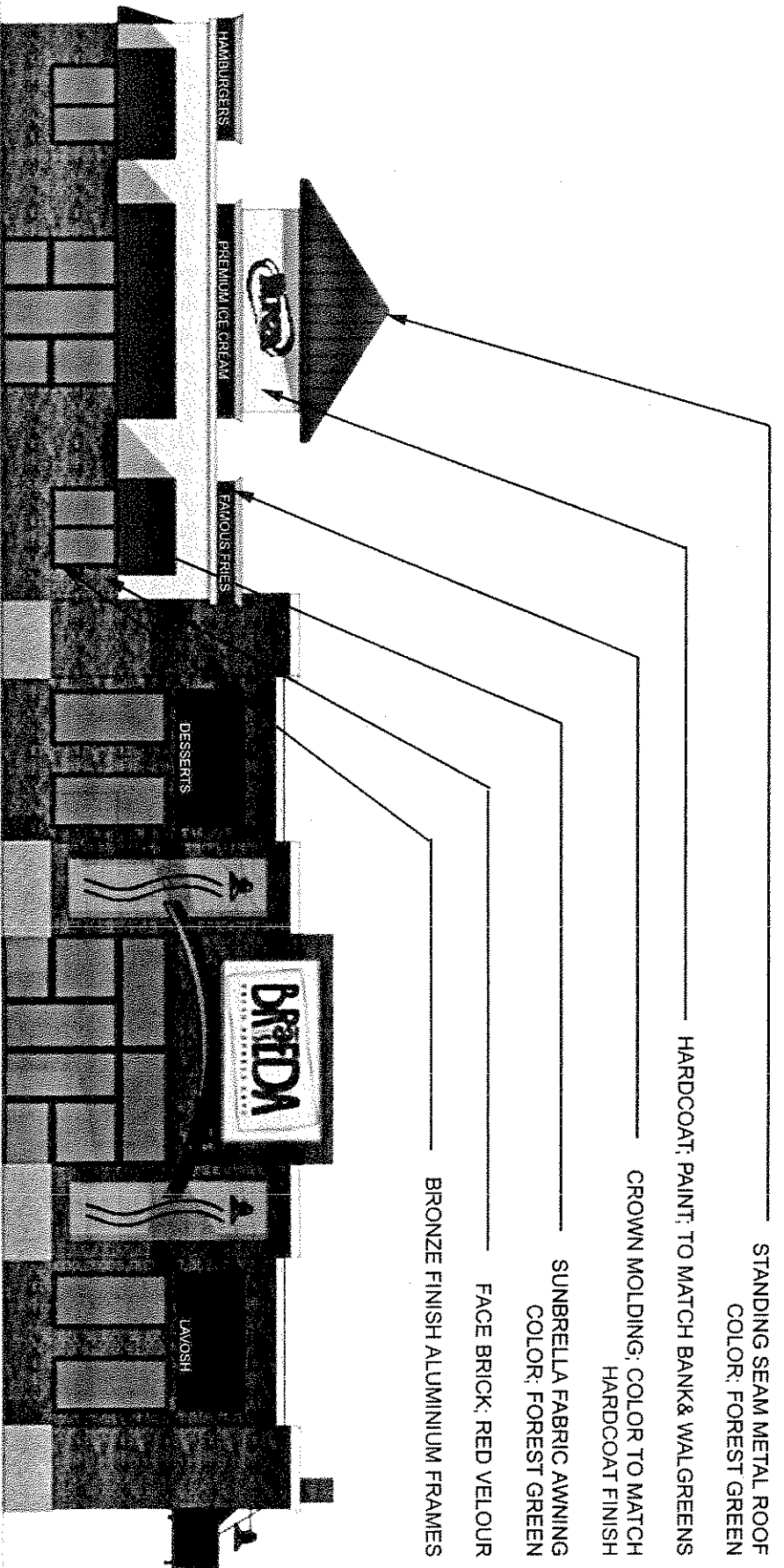
LOOKING WEST 48 TH& O RUNZA/ BRAEDA





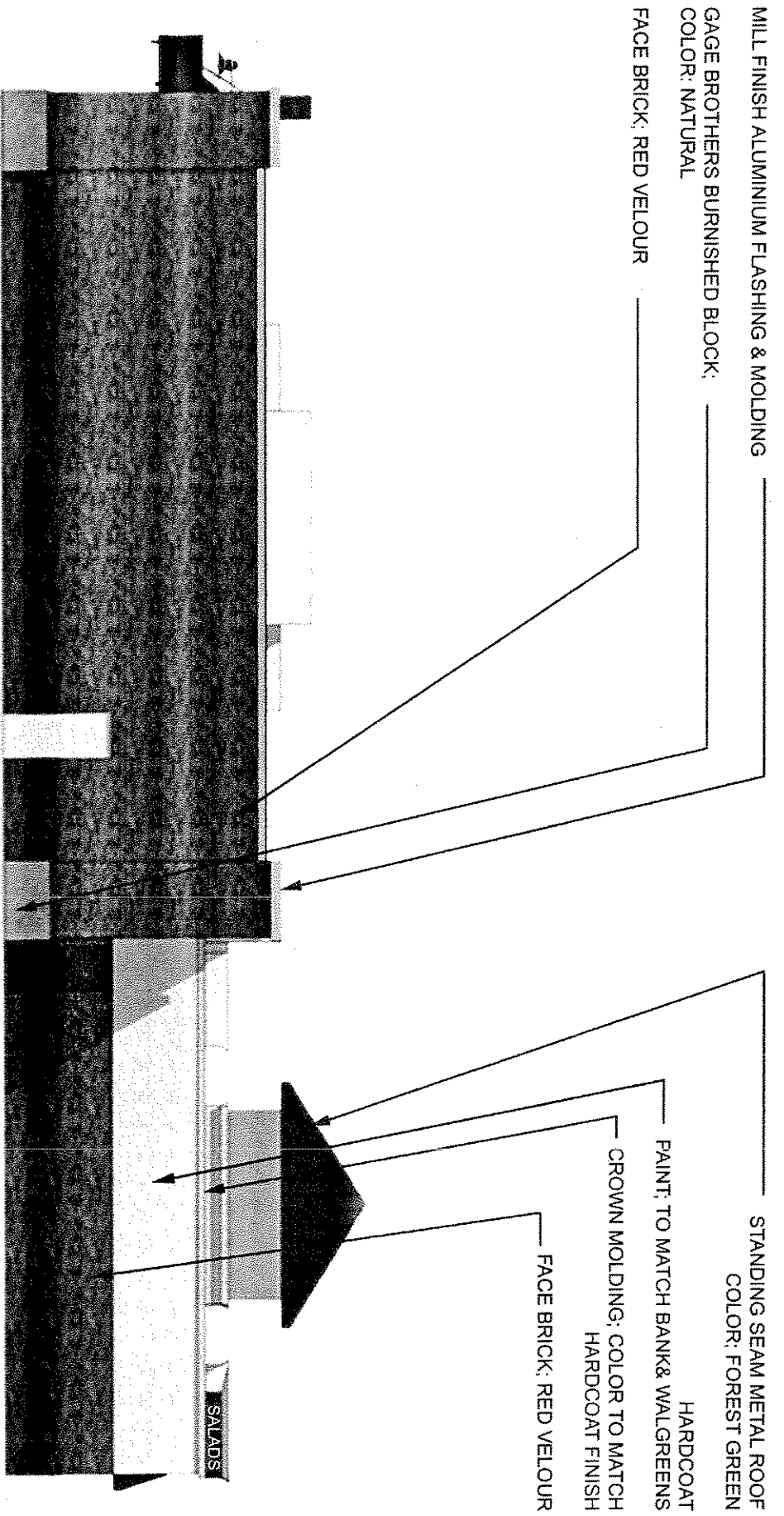
LOOKING EAST 48 TH & O RUNZA/ BRAEDA





LOOKING SOUTH 48 TH & O RUNZA/ BRAEDA





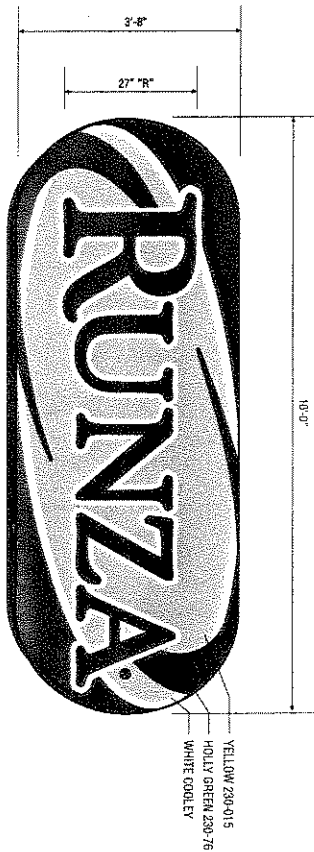
LOOKING NORTH 48 TH& O RUNZA/ BRAEDA







# Runza Pill Shape Wall Sign Cabinet



## Wall Sign Technical Specifications

Wall Sign: 3'-8" x 10'-0"  
 Cabinet: .050 Aluminum, Over 2"x2"x3/16" Angle Interior  
 Cabinet Color: Holly Green 230-76  
 Retainer Color: Holly Green 230-76  
 Sign Face: White Lexan with Vinyl Graphics Applied  
 Vinyl Colors: Noted with Swatches  
 Illumination: CW/Ho Fluorescent Lamps Running on 800ma, Ballasts, Wiring/Electrical Components UL Approved, Flush Mount to Foscia Using Non-Corrosive Fasteners.  
 Mount: Remove Face  
 Service Access:

## COLORS

- ☐ WHITE COOLEY
- ☐ HOLLY GREEN 230-76
- ☐ YELLOW 230-015



## Designing Your Frame

303 N. ELM STREET, BURLINGTON, NE 68801-4850  
 TEL: 402/333-1111  
 FAX: 402/333-1112  
 WEB SITE: WWW.TRI-CITYSIGN.COM

### DESIGN TYPE(S)

INTERIOR	EXTERIOR	<input checked="" type="checkbox"/>
NEON	CHANNEL LETTERS	<input type="checkbox"/>
NON-ILLUM. SIGN	RET. CHAN. LETTERS	<input type="checkbox"/>
TWO POLE SIGN	SINGLE POLE SIGN	<input checked="" type="checkbox"/>
MONUMENT SIGN	WALL SIGN	<input type="checkbox"/>
HEADER BOARD	LED LIGHT	<input type="checkbox"/>
TURNPIKE	OTHER	<input type="checkbox"/>

### PROJECT TYPE

NEW CONSTRUCTION	<input checked="" type="checkbox"/>
USE EXISTING POLE STRUCTURE	<input type="checkbox"/>
PAVE (TYPICAL) CHANGE	<input type="checkbox"/>
DEMOLITION	<input type="checkbox"/>
ADDITIONAL LIGHTS, SIGNS AND RETAIL NEW PILL SHAPE WALL SIGN CABINET.	<input type="checkbox"/>

COLOR SPECIFICATIONS: ALL COLORS ARE WRITTEN IN PANTONE COLOR MATCHING SYSTEM AND ALSO BY THEIR REFERENCE NUMBERS.

### REVISIONS

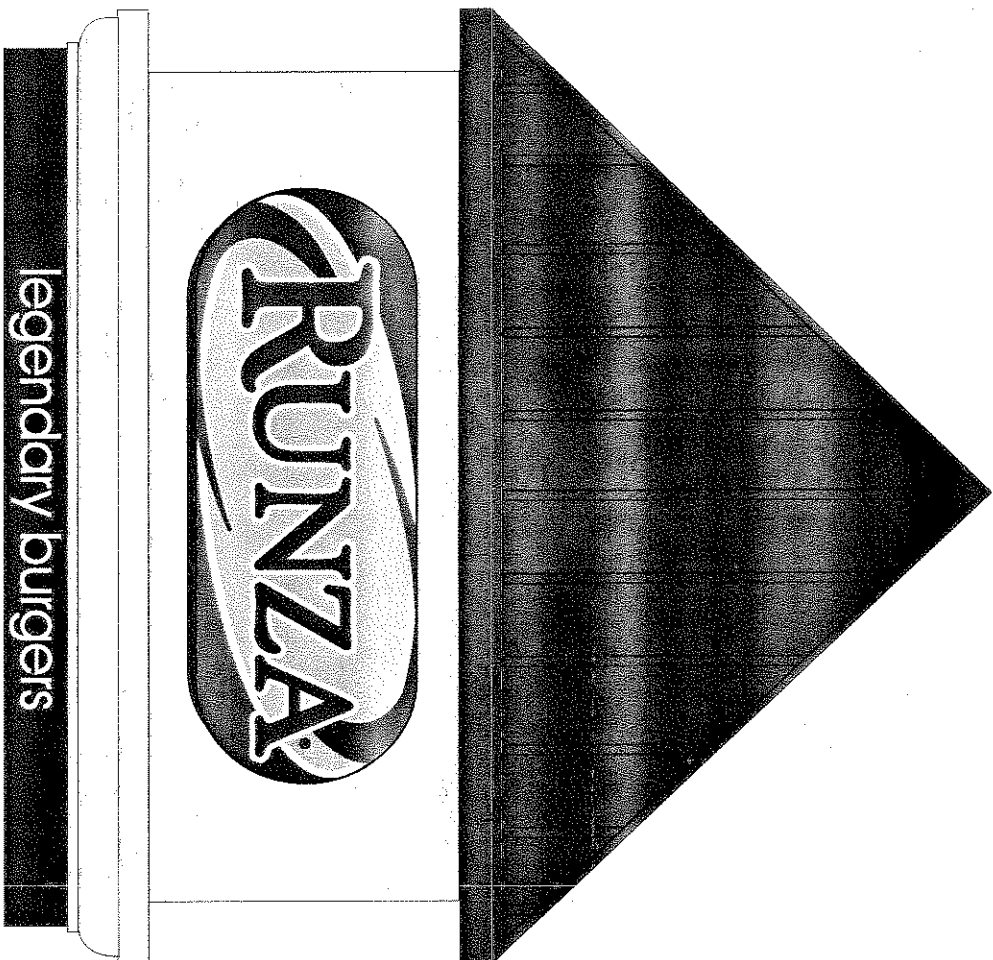
NO.	DATE	DESCRIPTION

DESIGN BY: **TRICITY**  
 JOB TITLE: **OWNER**  
 LOCATION: **400 S. LINCOLN, NE**  
 DESIGNED BY: **DEAN BECK**  
 SALES: **TIM MARGHER**  
 DATE: **11-1-05**  
 DRAWING ON COMPUTER BY: **AS**  
 SCALE: **1/4" = 1'**



NOTE: This drawing is for informational purposes only. Any use without the Tri-City Sign logo is prohibited. Reproduction and resale is prohibited.





14'-0" Wide Tower Shown

Developing Your Future  
280 N. Elm Street, Suite 100, NE, Omaha, NE 68102-4055  
Phone: 402.441.1234  
Web Site: [www.runzaburgers.com](http://www.runzaburgers.com)

DESIGN TYPE(S)	
INTERIOR	<input checked="" type="checkbox"/>
EXTERIOR	<input checked="" type="checkbox"/>
ARCH	<input checked="" type="checkbox"/>
CHANNEL LETTERS	<input checked="" type="checkbox"/>
IRON PLATE SIGN	<input checked="" type="checkbox"/>
PREPARED LETTERS	<input checked="" type="checkbox"/>
TWO POLE SIGN	<input checked="" type="checkbox"/>
SINGLE POLE SIGN	<input checked="" type="checkbox"/>
MODULAR SIGN	<input checked="" type="checkbox"/>
WALL SIGN	<input checked="" type="checkbox"/>
BEACON BOARD	<input checked="" type="checkbox"/>
LED LIGHT	<input checked="" type="checkbox"/>
ANYWAYS	<input checked="" type="checkbox"/>

PROJECT TYPE	
NEW CONSTRUCTION	<input checked="" type="checkbox"/>
RE-EXISTING POLE STRUCTURE	<input checked="" type="checkbox"/>
FACE (TENTATIVE) CHANGE	<input checked="" type="checkbox"/>
REMODELING	<input checked="" type="checkbox"/>
CONTRACTUAL AGREEMENT AND SPECIAL NEW POLYMER WALL SIGN CHARTER	<input checked="" type="checkbox"/>

COLLUM SPECIFICATIONS: ALL COLLUMS ARE INSTALLED WITH 1/2" DIA. BOLTS AND ALSO OF THEIR INTERFERENCE NUMBER.

REVISION	NO	DATE	DESCRIPTION

DESIGN #	
JOB TITLE RUNZA	
LOCATION: 40TH & LINCOLN, NE	
DESIGNER: DEBRA BECK	
SALES: TIM MANCHER	
DATE: 11-1-05	
DRAWN BY: COMPUTER AID	
SCALE: 1/4" = 1'	



**TRI CITY**  
SIGN CORPORATION  
[www.tricitysign.com](http://www.tricitysign.com)

NOTE: This is a preliminary drawing. Any changes must be made by the client before final production.

1/24

NOT TO SCALE







1" Heavyals Painted Black  
Size 6'-6" Long

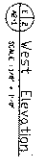
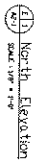
**Brick Base is Built By Others.**

**RUNZA COLORS**

	WHITE PLEXIGLASS
	HOLLY GREEN 230-76
	YELLOW 230-76





[illegible]

Architectural  
Registration  
Interior Design

Policy Page

## EXTERIOR BLENDING CONDITIONS

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 A2-1

THE WILMINGTON JOURNAL  
By:



**Wagreena**

PLANNING AND DESIGN  
1000 10th Street  
St. Paul, MN 55102  
Phone: (612) 222-1100

**PROJECT TYPE**

☐ Commercial/Industrial

☐ Educational

☐ Government

☐ Healthcare

☐ Industrial

☐ Institutional

☐ Manufacturing

☐ Office

☐ Other

☐ Warehouse

☐ Other

☐ Other

☐ Other

☐ Other

☐ Other

☐ Other

☐ Other

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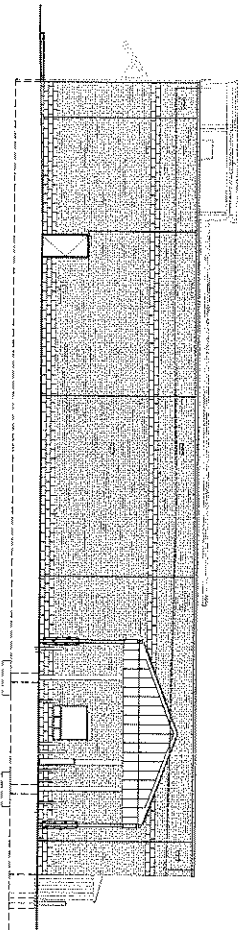
☐ Other

☐ Other

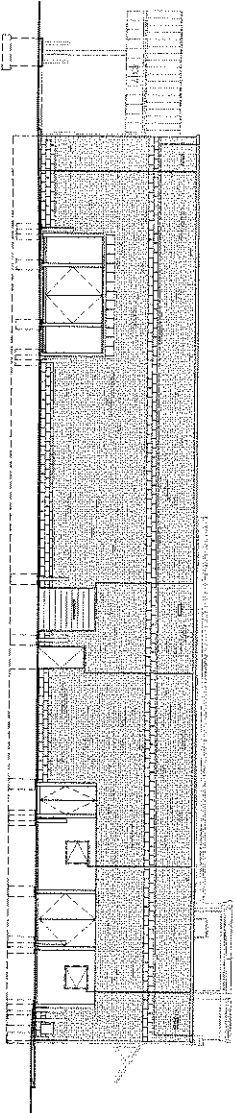
**DAVIS**

211 West 11th Street  
Iowa, Iowa 52241  
Phone: (515) 281-1100

**South Elevation**



**East Elevation**

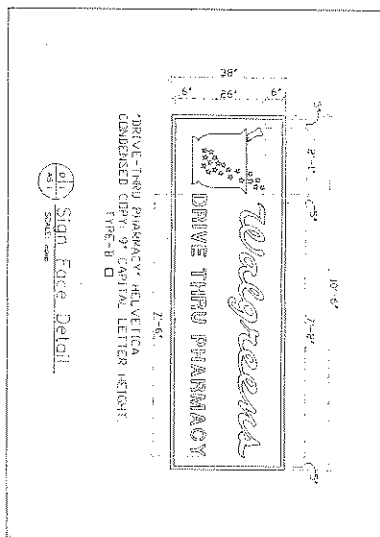
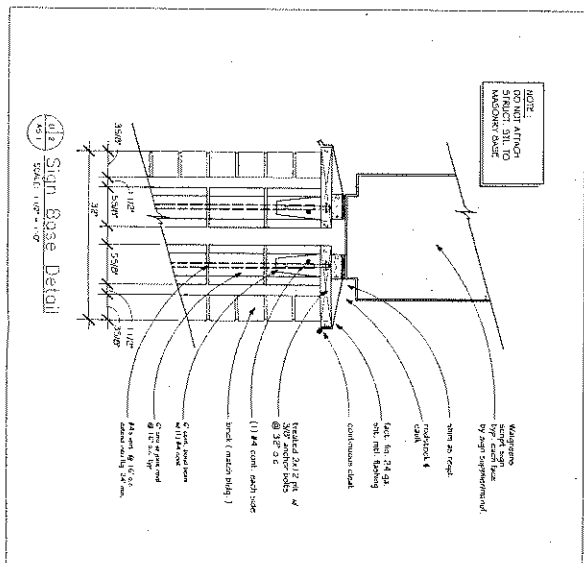
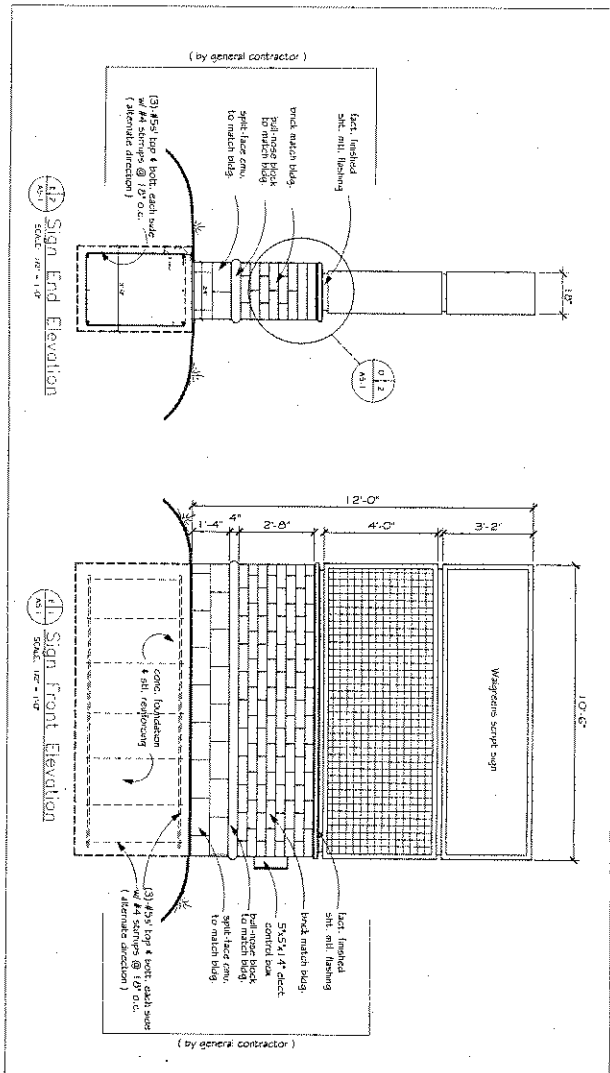


NEW WAGREENA FACILITY

EXTERIOR BUILDING ELEVATIONS

DATE: _____	SYMBOL NO: _____	DESIGNER: _____
BY: _____	SCALE: AS SHOWN	PROJECT NO: _____
REVISION: _____	PROJECT NO: _____	DATE: _____
A2-2		





**NOTE:**  
1. SEE SIGN MATERIALS, STRUCTURAL, STEEL AND FOUNDATION (SEE GENERAL NOTES BELOW)  
2. SEE ELECTRICAL PLANS FOR CONDUIT AND DATA CABLE REQUIREMENTS  
3. PROVIDE BERM FOR SIGN AS HIGH AS CODE ALLOWANCE.

**GENERAL NOTES:**

1. SIGN SHALL BE CONSTRUCTED BY A NON-STRUCTURAL ENGINEER. THE SIGN SHALL BE CONSTRUCTED BY A NON-STRUCTURAL ENGINEER. THE SIGN SHALL BE CONSTRUCTED BY A NON-STRUCTURAL ENGINEER.
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REDEVELOPER'S  
CERTIFICATE OF COMPLETION OF IMPROVEMENTS

[INSERT LEGAL DESCRIPTION], Lancaster County, Nebraska,

[NAME OF REDEVELOPER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a Nebraska \_\_\_\_\_, on behalf of the \_\_\_\_\_.

Notary Public



ACCEPTED by the City of Lincoln, Nebraska, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

CITY OF LINCOLN, NEBRASKA  
A Municipal Corporation,

\_\_\_\_\_  
City Clerk

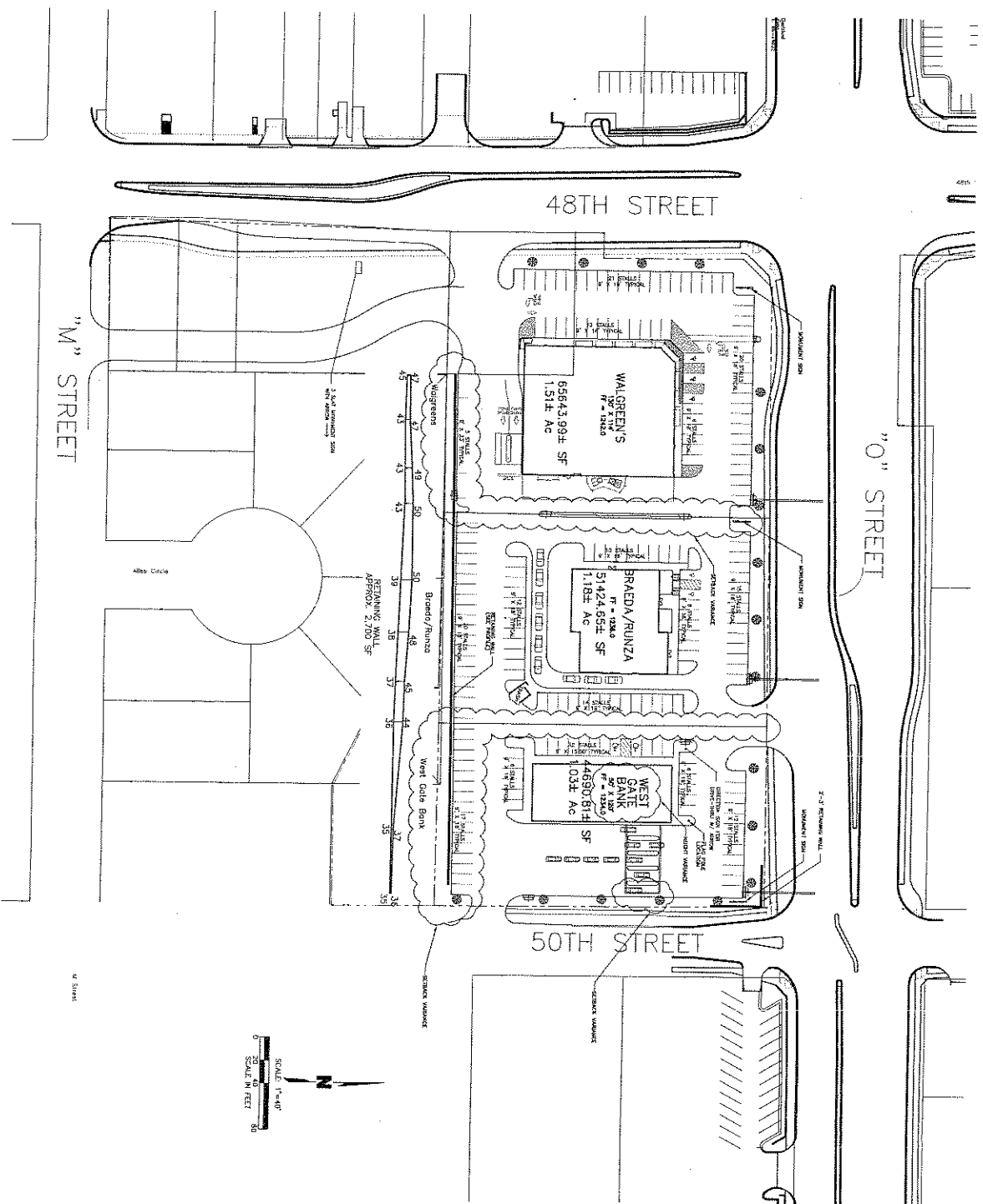
\_\_\_\_\_  
Mayor

STATE OF NEBRASKA     )  
                                      )ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, Mayor of the City of Lincoln, Nebraska.

\_\_\_\_\_  
Notary Public





SHEET 1 OF 2	DATE 7/7/04	PROJECT NO. 2004-0094	DRAWN BY ND	APPROVED BY TO	SOUTH SIDE CONCEPT				DATE 2005	DESCRIPTION REVISIONS																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									
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Uses and Sources, 48<sup>th</sup> and O, South Side

Uses	total
Building & site improvements	\$4,213,100
Property acquisition, holding costs, demolition, utility construction/relocation	4,910,000
Sidewalks	10,000
Street lights and street trees	10,000
Architect, engineer, legal fees	262,000
Appraisals, soils, environmental testing, final plat (city share only of plat)	103,750
Surveys	15,000
Title Insurance	25,000
Landscaping/irrigation	75,000
Retaining walls	205,750
Signage	136,000
Contingency, misc.	150,000
Deceleration lanes, both O and 48 <sup>th</sup> Streets	60,000
Utility disconnects (associated with decel lanes)	4,500
Real estate taxes	50,000
<b>Total</b>	<b>\$10,230,100</b>

**Sources:**

Private financing	\$5,094,600
Land sale proceeds	4,000,000
Tax Increment Financing (TIF)	585,815
Brownfields Grant	45,000
Other City funds	504,685
<b>Total:</b>	<b>10,230,100</b>



**DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANT, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_ 2006, by VILLAGE DEVELOPMENT – O STREET, L.L.C., a Nebraska limited liability company ("Village Development"), WEST GATE BANK ("West Gate"), and THE EATING ESTABLISHMENT 48<sup>TH</sup> & O, L.L.C., a Nebraska limited liability company ("Eating Establishment") (Village Development, West Gate and Eating Establishment are collectively referred to herein as "Declarants").

RECITALS

WHEREAS, Village Development is the owner of that certain parcel of land legally described as follows ("Lot 1"):

Lot 1, Phoenix Addition, Lincoln, Lancaster County, Nebraska; and

WHEREAS, Eating Establishment is the owner of that certain parcel of land legally described as follows ("Lot 2"):

Lot 2, Phoenix Addition, Lincoln, Lancaster County, Nebraska; and

WHEREAS, West Gate is the owner of that certain parcel of land legally described as follows ("Lot 3"):

Lot 3, Phoenix Addition, Lincoln, Lancaster County, Nebraska; and

WHEREAS, Village Development is the owner of that certain parcel of land legally described as follows ("Outlot A"):

Outlot A, Phoenix Addition, Lincoln, Lancaster County, Nebraska; and

WHEREAS, Village Development has entered into a Lease with Walgreen Co., an Illinois corporation ("Walgreens"), with respect to Lot 1 and Outlot A (the "Walgreens Lease"); and

WHEREAS, Declarants desire to develop Lot 1, Lot 2, Lot 3, and Outlot A (collectively, the "Property") substantially in accordance with the Site Plan attached hereto as Exhibit "A" and incorporated herein by this reference (the "Site Plan"); and

WHEREAS, Declarants desire to (i) ensure the orderly and proper development,



maintenance, and use of the Property in order to protect and preserve the overall character of the Property and its neighborhood in accordance with Declarants' desire to develop a quality commercial center; (ii) enhance and protect the value, attractiveness and desirability of the Lots (as hereinafter defined); (iii) provide and maintain a uniform set of rules, regulations, and restrictions concerning the construction and use of any structures on the Property; and (iv) provide for the maintenance, use, and operation of the Common Area (as hereinafter defined); and

WHEREAS, Declarants desire to impose certain easements upon the Property, and to establish certain covenants, conditions and restrictions with respect to the Property, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarants do hereby declare that the Property and all present and future owners and occupants of any lot, or any portion thereof, within the Property shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that the Property shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Declarants covenant and agree as follows:

1. Definitions. For purposes hereof:

- a) The term "Owner" or "Owners" shall mean Declarants and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Property, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- b) The term "Lot" or "Lots" shall mean each separately identified parcel of real property now constituting a part of the Property, and any future subdivisions or combinations thereof.
- c) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Lot, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).
- d) The term "Common Area" shall mean those portions of the Property that are outside of the building envelope on the Lots as reflected on the Site Plan, and which are either unimproved, or are improved as (without limitation) parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements.
- e) The term "Tenant" shall mean any single tenant leasing an entire Lot from an Owner.

2. Easements.

2.1 Lot 1 Access Easement. Village Development hereby declares, grants and conveys to the Owners of Lot 2 and Lot 3, for the use and benefit of the Owners of Lot 2 and Lot 3 and their tenants, and their respective subtenants, employees, agents, contractors, licensees,



permittees and invitees, a nonexclusive, perpetual easement for reasonable access, ingress and egress over and across those portions of Lot 1 as are designated as common drive areas or common access driveways on the Site Plan, to provide vehicular passage over and across Lot 1. There shall be no easement rights for parking on Lot 1 created by this Declaration.

2.2 Lot 2 Access Easement. Eating Establishment hereby declares, grants and conveys to the Owners of Lot 1 and Lot 3, for the use and benefit of the Owners of Lot 1 and Lot 3 and their tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, a nonexclusive, perpetual easement for reasonable access, ingress and egress over and across those portions of Lot 2 as are designated as common drive areas or common access driveways on the Site Plan, to provide vehicular passage over and across Lot 2. There shall be no easement rights for parking on Lot 2 created by this Declaration.

2.3 Lot 3 Access Easement. West Gate hereby declares, grants and conveys to the Owners of Lot 1 and Lot 2, for the use and benefit of the Owners of Lot 1 and Lot 2 and their tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, a nonexclusive, perpetual easement for reasonable access, ingress and egress over and across those portions of Lot 3 as are designated as common drive areas or common access driveways on the Site Plan, to provide vehicular passage over and across Lot 3. There shall be no easement rights for parking on Lot 3 created by this Declaration.

2.4 Outlot A Access Easement. Village Development hereby declares, grants and conveys to the Owners of Lot 1, Lot 2 and Lot 3, for the use and benefit of the Owners of Lot 1, Lot 2 and Lot 3 and their tenants, and their respective subtenants, employees, agents, contractors, licensees, permittees and invitees, a nonexclusive, perpetual easement for reasonable access, ingress and egress over and across the access drive on Outlot A as reflected on the Site Plan, to provide vehicular passage over and across Outlot A. There shall be no easement rights for parking on Outlot A created by this Declaration.

2.5 Signage Easement. Village Development hereby declares, grants and conveys to the Owners of Lot 1, Lot 2 and Lot 3 an exclusive easement upon Outlot A, in the area shown on the Site Plan, for the construction, reconstruction, replacement, operation, maintenance and repair of a monument sign structure including electrical service thereto; provided, however, that such sign, and the dimensions and appearance thereof must at all times strictly comply with the plans attached hereto as Exhibit "B" and incorporated herein by this reference. The easement hereby granted in this Section 2.5 shall include reasonable access over, under, upon and across Outlot A to install, replace, maintain, repair and operate such monument sign. Notwithstanding the foregoing, no changes to the monument sign permitted hereunder as reflected on Exhibit "B" nor any other signs, structures, landscaping or improvements shall be placed or maintained on Outlot A that shall obstruct or impair the visibility of any other signage or improvements then existing on Lot 1 from the adjacent streets and roads (as determined by Walgreens). Such monument sign shall be used only for the purpose of identifying the name of one Owner or Tenant occupying each Lot. The provisions of this Paragraph shall in no way be deemed to permit the erection of any other billboard, signage or any other item within Outlot A.



2.6 Access Openings. The opening(s) and access point(s) contemplated for use of the access easement areas described in this Section 2 are hereinafter called the "Access Openings." The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Site Plan. There shall be maintained between the Access Openings a smooth and level grade transition to allow the use of the access easement areas for vehicular ingress and egress as set forth in this Section 2.

2.7 Non-Interference. The Owners and Tenants of the Lots shall not do anything so as to interfere with the reasonable use of the easements herein granted. No barricade, fence or other like obstruction or improvement shall be erected or maintained on the access easement areas so as to substantially impair the free flow of vehicular traffic thereon (except this restriction shall not apply to reasonable temporary construction barricades).

3. Maintenance, Repair and Construction.

3.1 Snow Removal. The Owners of Lot 1, Lot 2 and Lot 3 shall jointly contract for snow removal on the access easement areas described in Section 2 above, including the access drive on Outlot A, and all parking areas adjacent thereto. The Owners of Lot 1, Lot 2 and Lot 3 shall each pay their respective proportionate share, based on the square footage of land area on each Lot, of all costs and expenses incurred in connection with such snow removal.

3.2 Maintenance. Except as specifically set forth herein, each Owner of a Lot covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained at its expense its Lot and all Common Area located thereon in good order, condition and repair. Following the construction of improvements thereon, maintenance of the Common Area shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping and underground sprinkler systems, maintaining signage in good condition and repair, public liability and property damage insurance premiums, and performing any and all such other duties as are necessary to maintain such Common Area in a clean, safe and orderly condition. Except as otherwise expressly provided in this Declaration, once constructed, in the event of any damage to or destruction of all or a portion of the improvements on any Lot, the Owner of such Lot shall, at its sole cost and expense, with due diligence repair, either restore the improvements on such Lot to their condition prior to such damage or destruction (or with such changes as shall not conflict with this Declaration) or demolish the remaining improvements.

3.3 48<sup>th</sup> Street Access Drive. The Owners of Lot 1, Lot 2 and Lot 3 shall reimburse the Owner of Outlot A or Walgreens for their respective proportionate share of all reasonable costs or expenses incurred by the Owner of Outlot A or Walgreens in connection with the maintenance and repair of the access improvements located on Outlot A, as shown on the Site Plan, within ten (10) days of receipt of an invoice therefore.



3.4 Construction. Every building (including its appurtenant Common Area improvements), now or in the future constructed within the Property, shall be constructed substantially in accordance with the Site Plan, subject only to such changes as do not unreasonably interfere with the access easements granted herein.

3.5 Outlot A Monument Sign. The Owners of Lot 1, Lot 2 and Lot 3 shall jointly contract for the operation, maintenance, and repair of the monument sign located on Outlot A. The Owners of Lot 1, Lot 2 and Lot 3 shall each pay one-third ( $\frac{1}{3}$ ) of all costs and expenses incurred in connection with the construction, operation, maintenance, and repair of such monument sign. Each Owner or Tenant shall be responsible for the cost of its sign panel located thereon.

4. Restrictions.

4.1 General. Each Lot shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Lot that is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of the Property shall be used, directly or indirectly, for 1) any outdoor off-premise advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof, 2) the operation of an adult book store, adult theatre, adult amusement facility, 3) the operation of any facility selling or displaying pornographic materials or having such displays, or 4) a gas station or convenience store with or without gasoline pumps.

4.2 Additional Restrictions.

a) Lot 2 and Lot 3. No portion of Lot 2 or Lot 3 shall be used for the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; provided, however, that this restriction shall terminate one hundred and eighty (180) days following the date the building constructed on Lot 1 is no longer utilized as a pharmacy, at which time such restriction shall be of no force and affect or binding upon the Owner of Lot 2 or Lot 3.

b) Lot 1 and Lot 3. No portion of Lot 1 or Lot 3 shall be used for the operation of a fast-casual or fast-food restaurant, with or without a drive-thru window and/or lane; except that this restriction shall not prohibit the operation of a full service restaurant that may provide carry-out for consumption off the premises; provided, however, that this restriction shall terminate one hundred and eighty (180) days following the date the building constructed on Lot 2 is no longer utilized as a fast-casual or fast-food restaurant, at which time such restriction shall be of no force and affect or binding upon the Owner of Lot 1 or Lot 3.



c) Lot 1 and Lot 2. No portion of Lot 1 or Lot 2 shall be used for the operation of a bank or financial institution; except that this restriction shall not prohibit the installation and operation of ATM machines other than freestanding ATM machines which shall not be permitted; provided, however, that this restriction shall terminate one hundred and eighty (180) days following the date the building constructed on Lot 3 is no longer utilized as a bank or financial institution, at which time such restriction shall be of no force and affect or binding upon the Owner of Lot 1 or Lot 2.

5. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of real property subjected to this Declaration. No easements, except those expressly set forth in Section 2, shall be implied by this Declaration; in that regard, and without limiting the foregoing, no easements for parking, signage, drainage or utilities are granted or implied.

6. Remedies and Enforcement.

6.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) and Walgreens or any other Tenant shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Walgreens or any other Tenant shall have the right, but not the obligation, to enforce this Declaration on behalf of the Owner of Lot 1 or the Lot such Tenant is leasing, as the case may be, and/or to cure a breach or default hereunder by the Owner of Lot 1, in the case of Walgreens, or the Owner of the Lot such other Tenant is leasing, which enforcement or cure shall be accepted by the other Owner(s).

6.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner or Walgreens or any other Tenant (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), Walgreens or any other Tenant or any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate, plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on any Lot, an Owner or Walgreens or any other Tenant may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

6.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to Owner (or to Walgreens



or any other Tenant in connection with the exercise of its rights set forth in paragraphs 6.1 and/or 6.2 above) in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Lot of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the Register of Deeds of Lancaster County, Nebraska; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the Register of Deeds of Lancaster County, Nebraska prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording the same shall record an appropriate release of such Assessment Lien.

6.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

6.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

6.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Sections 2 and/or 4 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Sections 2 and/or 4 of this Declaration, the non-defaulting Owner and Walgreens or any other Tenant, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Sections 2 and/or 4 of this Declaration.

7. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the Office of the Register of Deeds of Lancaster County, Nebraska and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Lots in accordance with paragraph 8.1 hereof.



8. Miscellaneous.

8.1 Amendment.

a) The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all of the Owners, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the Office of the Register of Deeds of the Lancaster County, Nebraska.

b) Notwithstanding subparagraph 8.1(a) above or anything else in this Declaration to the contrary, no termination of this Declaration, and no modification or amendment of this Declaration shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Walgreens (during the continuance of the Walgreens Lease).

8.2 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (i) be in writing; (ii) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (iii) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Walgreens or any other Tenant under this Declaration shall be deemed granted unless written notice that such consent is denied or conditioned is delivered to the Owner requesting such consent within thirty (30) days of receipt of request for such consent. During the continuance of the Walgreens Lease, any consent by the Owner of Lot 1, to be effective, shall also require the consent of Walgreens.

8.3 No Waiver. No waiver of any default of any obligation by any Owner or other party bound hereunder shall be implied from any omission by the other Owner(s) or other party with rights hereunder to take any action with respect to such default.

8.4 No Agency. Nothing in this Declaration shall be deemed or construed to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Owners.

8.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

8.6 Grantee's Acceptance. The grantee of any Lot or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original Owner or from a subsequent owner of such Lot, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions,



restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other Owner(s), to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

8.7 Severability. Each provision of this Declaration and the application thereof are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

8.8 Time of Essence. Time is of the essence of this Declaration.

8.9 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

8.10 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each Owner and Walgreens may change from time to time their respective address for notice hereunder by like notice to the other Owner(s) and Walgreens. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to Walgreens (during the continuance of the Walgreens Lease). The notice addresses of Declarants and Walgreens are as follows:

Walgreen:

Walgreen Co.  
104 Wilmot Road, MS#1420  
Deerfield, Illinois 60015-4616  
Attention: Real Estate Law Department



Village Development: Village Development – O Street, L.L.C.  
1045 Lincoln Mall, Suite 300  
Lincoln, Nebraska 68508  
Attn: Tamas R. Allan, Manager

Eating Establishment: The Eating Establishment 48<sup>th</sup> & O, L.L.C.  
5931 South 58<sup>th</sup> Street  
Lincoln, Nebraska 68506  
Attn: Donald R. Everett, Jr., Manager

West Gate: West Gate Bank  
6003 Old Cheney Road  
Lincoln, Nebraska 68516  
Attn: Carl J. Sjulín, President

8.11 Governing Law. The laws of the State of Nebraska shall govern the interpretation, validity, performance, and enforcement of this Declaration.

8.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Lot, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

8.13 Insurance and Indemnification. Throughout the term of this Declaration, each Owner shall procure and maintain (or cause to be procured and maintained) general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained below), death, or property damage occurring upon such Owner's Lot, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any. Such insurance coverage shall be procured through companies authorized to do business in the State of Nebraska. Walgreens (whether as tenant under the Walgreens Lease or in the event Walgreens becomes an Owner of a Lot) may elect to self-insure and/or carry insurance required hereunder under master or blanket policies of insurance. Any Tenant may elect to carry insurance required hereunder under master or blanket policies of insurance.

Each Owner shall indemnify and hold the other Owners and their respective tenants harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

8.14 Taxes and Assessments. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Lot prior to delinquency.



IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year first above written.

VILLAGE DEVELOPMENT - O STREET, L.L.C.,  
a Nebraska limited liability company,

By: \_\_\_\_\_  
Tamas R. Allan, Manager

WEST GATE BANK

By: \_\_\_\_\_  
Carl J. Sjulín, President

THE EATING ESTABLISHMENT 48<sup>TH</sup> & O, L.L.C.,  
a Nebraska limited liability company

By: \_\_\_\_\_  
Donald R. Everett, Jr., Manager

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Tamas R. Allan, Manager of Village Development – O Street, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Carl J. Sjulín, President of West Gate Bank.

\_\_\_\_\_  
Notary Public



STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Donald R. Everett, Jr., Manager of The Eating Establishment 48<sup>th</sup> & O, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

**Site Plan**

[TO BE ATTACHED]



EXHIBIT 6

Arterial Street Impact Fees							
Address	Building Use	Square Footage	Arterial Street Impact Fee Credit	Projected Project Area Description	Square Footage	Arterial Street Impact Fee from Projected Project	Arterial Street Impact Fees Due Projected new use
240 S 48	SFR		\$1,876.00	Walgreen's	14820	\$40,829.10	
4949 O	Retail	48680	\$134,113.40	Runza	6000	\$16,530.00	
5001 O	Retail	7956	\$21,918.78	West Gate Bank	7000	\$37,233.00	
5038 N	Parking Lot?						
140 S 48	Retail	7326	\$0.00				
200 S 48	SFR		\$1,876.00				
224 S 48	SFR		\$1,876.00				
230 S 48	SFR		\$1,876.00				
			\$163,536.18				\$0.00
Water Utilities Impact Fees							
Address	Building Use	Meter Size	Water Utilities Meter Credit	Projected Project Area Description	Projected Project Water Meter Size	Water Utilities Impact Fee	Water Utilities Impact Fees Due
240 S 48	SFR	3/4"	\$1,236.00	Retail	1"	\$1,236.00	
4949 O	Retail	2"	\$6,591.00	Retail	3/4"	\$2,060.00	
5001 O	Retail	3/4"	\$1,236.00	Bank	3/4"	\$1,236.00	
5038 N	Parking Lot?						
140 S 48	Retail	3/4"	\$1,236.00				
200 S 48	SFR	3/4"	\$1,236.00				
224 S 48	SFR	3/4"	\$1,236.00				
230 S 48	SFR	3/4"	\$1,236.00				
			\$14,007.00				\$0.00



## EXCAVATING, FILLING AND GRADING

### PART ONE - GENERAL

#### 1.1 DESCRIPTION

1.1.1 Work included: Excavating, filling and grading for this Work includes, but is not necessarily limited to:

- 1) Demolition, Clearing and grubbing of the site;
- 2) Stripping and cutting of the site, where required in the Drawings;
- 3) Filling and backfilling to attain indicated grades;
- 4) Rough and finish grading of the site;
- 5) Soil inspections.

#### 1.2 QUALITY ASSURANCE

1.2.1 Standards: Comply with the provisions of the latest edition of the following standards, as specified in this Section. In case of conflict between the referenced standards and these Specifications, the more stringent requirements shall govern:

- 1) OSHA Excavation and Trench Safety Standards;
- 2) City of Lincoln standards for utilities;
- 3) All other applicable regulatory standards.

1.2.2 Inspections: Owner shall inspect the work in coordination with the Developer's Architect to determine compliance with these specifications.

1.2.4 Finish lines and grades: For setting and establishing finish elevations and lines, the Contractor shall use only personnel who are thoroughly trained and experienced in this type of work. Carefully preserve all data and monuments, and reset all lot corners not found after demolition and fill operations.

#### 1.3 JOB CONDITIONS

1.3.3 Additional cut and fill: After demolition specified herein, some of the existing soils may be found by the Owner to be inadequate for proposed required bearing. Demolition Contractor shall remove additional soil and provide additional compacted fill at the direction of the Owner.



proposed building, up to property lines and adjacent to proposed building, to a line 4' onto public right of way.

### 3.3 PREPARATION OF SUBGRADE

3.3.1 Scarifying: If site fill and compaction is required, then after the site has been cleared, stripped, and excavated to within six inches of the specified depths for recompaction, and proofrolled, scarify the exposed surface to a minimum depth of nine inches, thoroughly moisture-condition, and compact to the requirements specified for fill below. Scarified soils which cannot be recompacted to the specified degree shall be undercut and replaced with stable fill.

3.3.2 Leveling: Remove all ruts, raised areas, and other uneven surfaces by surface grading prior to placement of fill.

### 3.4 FILL AND COMPACTION

3.4.1 Site filling: For site fill and compaction required, prepare the subgrade as specified above. After subgrade compaction has been approved by the Soils Engineer, spread approved fill material in layers not exceeding 8" in uncompacted thickness.

3.4.2 Moisture-conditioning: Water or aerate the fill material as necessary, and thoroughly mix to obtain a moisture content which will permit proper compaction. Unattended or indiscriminate puddling with water or jetting will not be permitted unless specifically authorized by the Soils Engineer for densification of cohesionless material.

3.4.3 Compaction: Compact each scarified soil and each layer of fill to at least the specified minimum degree. Compaction shall be accomplished by the use of power rollers, sheep's foot rollers, machine tampers, hand-operated tampers, such as "Wacker Rammers", or other mechanical equipment. Repeat compaction process until grades indicated in the Drawings are attained.

3.4.4 Backfilling of existing foundation walls: Backfill walls to grade line or to floor lines. Clean excavation of all debris and backfill to within 4" of required finish grade or to within 8" of required finish floor. Backfill shall be mechanically tamped and densified to the minimum degree of compaction scheduled. Backfill in layers not exceeding eight inches in uncompacted thickness. Brace all existing adjacent foundation walls sufficiently. Repair any walls pushed out of line due to backfilling.

3.4.5 Proofrolling: After demolition and completing filling of the site, proof roll the exposed soils in the presence of the Soils Engineer's representative. Unsuitable areas observed at this time shall be improved by compaction or by undercutting and placement of suitable compacted fill. Use a fully loaded



recompact as specified for fill and compaction above at no additional cost to the Owner.

### 3.6 GRADING

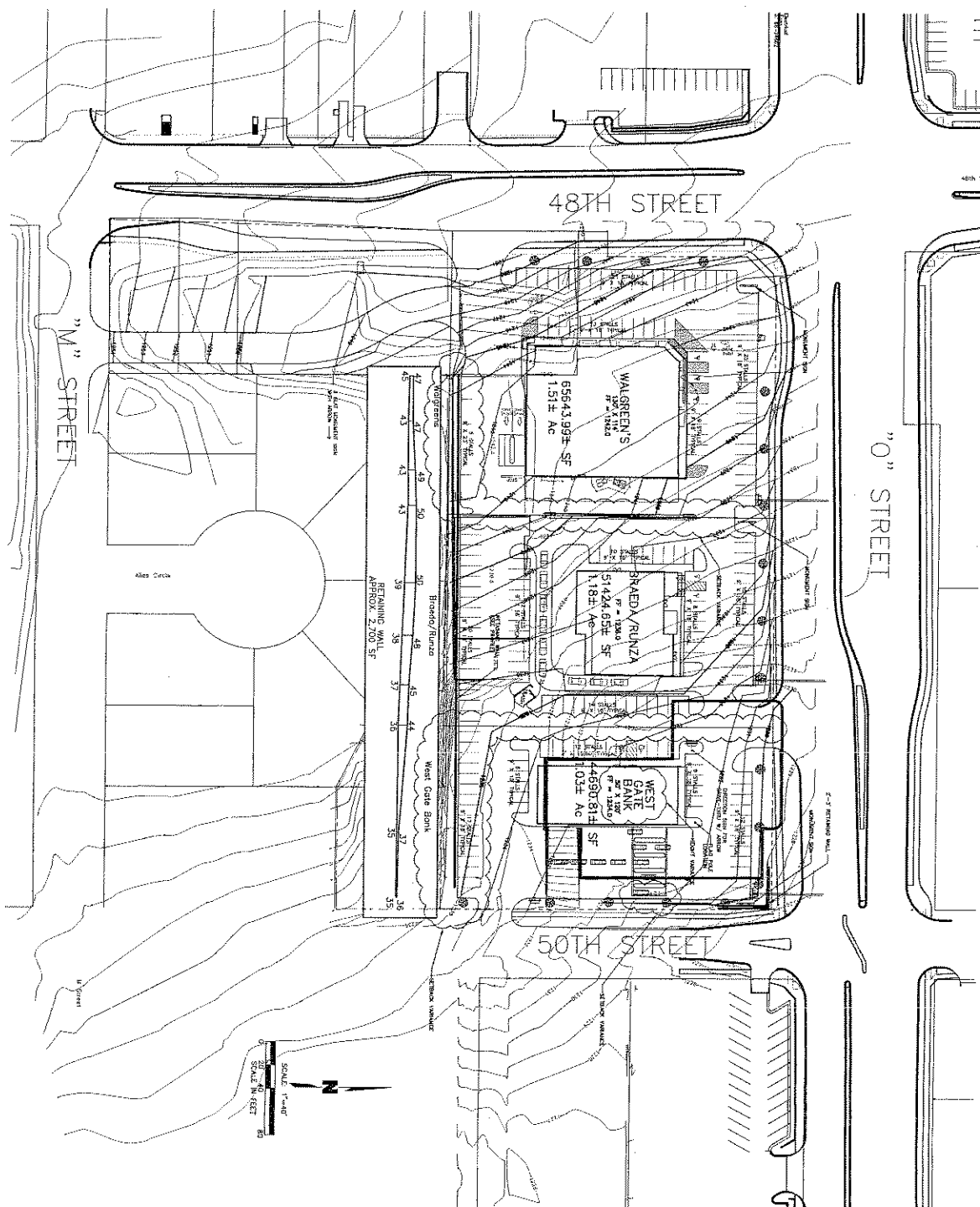
3.6.1 General: Except as otherwise directed by the Architect, perform all rough and finish grading required to attain a well drained site, leaving no depressions that will puddle rain.

3.6.2 Finish grade: Provide and place compacted structural fill to elevations required to drain site to alley and sidewalks.

3.6.3 Treatment after completion of grading: Use all means necessary to prevent erosion of freshly graded areas during construction and until such time as permanent drainage and erosion control measures have been installed. It is the Contractor's sole responsibility to comply with all applicable regulations in preventing loss of soil from the site.

★ 3.4.8 Frequency of Testing. Every 10,000 square feet in parking areas and every 2,500 square feet in building areas per 12 inches of fill placed.





SOUTH SIDE GRADING CONCEPT

48th and 'O' STREET

LINCOLN, NE

2005

REVISIONS

**OLSSON ASSOCIATES**  
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## Timeline and Critical Path

## Exhibit "I"

August 2004 the area bounded by 48th, 52nd, "R" and "N" streets was declared blighted and substandard.

April 15, 2005 Developer submitted a joint Proposal for Redevelopment to the City ("Proposal for Redevelopment"), in response to the City's Request for Proposals, Specification No. 05-049 Subpart B, with respect to the redevelopment of the real property generally located at the southeast corner of 48th and O Streets.

May 2005 Developer (sole proposal) selected as Redeveloper of Record under Nebraska Community Development Law – Negotiations begin.

October 26, 2005 Real estate sales agreement signed w/Balvi LLC in connection with and contingent upon the approval of a redevelopment agreement pursuant to city spec. 05-049 subproject area b (south side 48th and O street redevelopment).

November 14, 2005 Introduction of Redevelopment Agreement Before City Council.

November 25, 2005 Phase II Opt out in Balvi Agreement ends.

November 28, 2005 Public Hearing and Action on Redevelopment Agreement

December 15, 2005 Redevelopment Agreement Approval Contingency Balvi, Agreement

January 9, 2006 City/Balvi Closing on Balvi, LLC Property

January to March 2006 Site demolition.

March 2006 to March 2007 "O" Street from 45th to 52nd streets will close for improvements. During construction, traffic will be detoured to "R" Street on 44th and 52nd streets.

Fall 2006 Project Closing

Fall 2006 to Spring 2007 Private construction.

Spring 2007 Project grand opening.